

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :
6 vs. : No. 3:15-cr-00015-LRH-VPC
7 SHAUN JERMAINE ESTES, :
8 Defendant. :
9

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11 TRANSCRIPT OF EVIDENTIARY HEARING (Day 1)
12 (Pages 1 through 174)

13 March 30, 2016

14 Reno, Nevada

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A P P E A R A N C E S

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1 RENO, NEVADA, MARCH 30, 2016, 1:36 P.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Good afternoon. Have a seat,
6 please.

7 COURTROOM ADMINISTRATOR: Today is the date and
8 time for evidentiary hearing regarding motion to suppress,
9 document number 38, in criminal case 3:15-cr-15-LRH-VPC,
10 United States of America versus Shaun Jermaine Estes.

11 Lauren Gorman and Biray Dogan are present on
12 behalf of the defendant.

13 Megan Rachow is present on behalf of the
14 government.

15 THE COURT: Okay. The Court has before it the
16 motion to suppress which has been filed, and we set this
17 matter for a hearing today. The burden is on the
18 government.

19 Ms. Rachow, are there any preliminary matters
20 that we need to address before we get started?

21 MS. RACHOW: I don't believe so, Your Honor.
22 But I do believe the parties will be invoking the Rule of
23 Exclusion.

24 THE COURT: All right.

25 MS. GORMAN: Your Honor, we would just ask for

1 an additional order for the witnesses, especially after
2 they testify, to not discuss the case with each other.

3 THE COURT: All right. The Court will impose
4 both of those restrictions. Anyone who expects that they
5 may be a witness in this matter will be required to wait
6 outside the courtroom. They also should not be discussing
7 their testimony with any other persons other than counsel
8 for the -- their respective counsel.

9 And after any witnesses testify, there similarly
10 should be no discussion between other persons who may be
11 witnesses in this matter.

12 So I'll invoke the rule and along with those
13 restrictions at this time.

14 Are there any witnesses in the courtroom?

15 MS. RACHOW: Yes, Your Honor.

16 And the government's first witness is going to
17 be Detective Kurup. If the Court is ready for the
18 government to proceed.

19 COURTROOM ADMINISTRATOR: Please raise your
20 right hand.

21 You do solemnly swear that the testimony you
22 shall give in the cause now before the Court shall be the
23 truth, the whole truth, and nothing but the truth, so help
24 you God?

25 THE WITNESS: I do.

1 COURTROOM ADMINISTRATOR: Please be seated.

2 THE WITNESS: Thank you.

3 COURTROOM ADMINISTRATOR: Please state your name
4 and spell your name for the record.

5 THE WITNESS: Madhu Kurup, M-a-d-h-u K-u-r-u-p.

6 COURTROOM ADMINISTRATOR: Please tell us your
7 city and state of residence.

8 THE WITNESS: Reno, Nevada.

9 COURTROOM ADMINISTRATOR: Thank you.

10 THE COURT: All right. Ms. Rachow, go ahead,
11 please.

12 MS. RACHOW: Thank you, Your Honor.

13 MADHU KURUP

14 called as a witness on behalf of the
15 Government, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. RACHOW:

18 Q. Sir, how are you employed?

19 A. Pardon me, ma'am?

20 Q. How are you employed?

21 A. I'm a -- with the Amtrak Police Department. I'm a
22 detective.

23 Q. How long have you been with Amtrak?

24 A. Four years.

25 Q. And the entirety of your four-year career with

1 Amtrak, have you been a detective?

2 A. No, ma'am.

3 Q. What did you start off as?

4 A. As a patrol officer.

5 Q. How long were you with patrol?

6 A. About a year.

7 Q. Now, Amtrak isn't really an organization that we
8 work with very often. Can you tell us what your job duties
9 are as -- with being a detective with Amtrak?

10 A. Yes, ma'am. As far as Amtrak is concerned, any
11 crime committed along my area of responsibility that
12 pertains to the railroads or Amtrak trains, I go out on,
13 investigate, and proceed further follow-up needed or
14 charges need to be drawn or filed for.

15 Q. And do you work with local law enforcement?

16 A. Yes, ma'am.

17 Q. Now, how many, if you can give an estimate, are
18 employed as detectives with Amtrak?

19 A. Roughly about 40 or 50.

20 Q. Are you the only one in our area?

21 A. Yes, ma'am.

22 Q. And what other areas do you cover?

23 A. I am responsible for Nevada, Utah, and Wyoming.

24 Q. And what kind of training have you received?

25 A. I've gone through the police academy, Municipal

1 Police Academy in Pennsylvania.

2 I've gone through separate training with the
3 warrant -- First Judicial District Warrant Unit in
4 Philadelphia, numerous law enforcement trainings as far as
5 basics requirements to yearly upkeep, and also with
6 narcotics, tactical response trainings in Pennsylvania and
7 various other areas.

8 Q. Now, with mentioning training from both Pennsylvania
9 and I believe you said maybe Maryland, or did I mishear
10 you?

11 A. Yes, ma'am. Maryland also.

12 Q. Have you worked in law enforcement prior to your
13 employment with Amtrak?

14 A. Yes.

15 Q. And can you tell us --

16 THE COURT: Excuse me a second. Madam Clerk,
17 can you turn up the volume a little bit on our speaker
18 system?

19 COURTROOM ADMINISTRATOR: Sure.

20 THE COURT: All right. Thank you.

21 BY MS. RACHOW:

22 Q. And, sir, I had asked about your prior law
23 enforcement employment prior to working with Amtrak.

24 A. Yes, ma'am. I've worked in Philadelphia, and I've
25 also -- in Philadelphia, Pennsylvania, and also in Elkton,

1 Maryland.

2 Q. And how long were you with those departments?

3 A. Approximately four years each.

4 Q. Are you familiar with the security measures taken by
5 Amtrak?

6 A. Yes, ma'am.

7 Q. And can you explain what those security measures
8 would be?

9 A. Amtrak employs anywhere from uniform patrol to
10 canine units to mobile units, baggage screening units,
11 on-board screening units, and also detectives, plainclothes
12 or not.

13 Q. Are passengers given any sort of notification about
14 the type of security measures Amtrak puts into place?

15 A. Yes, ma'am. There's information on their ticket
16 sleeve, and there's also signs along -- around every
17 station.

18 Q. Now, sir, if I could have you provided with the
19 government's exhibits.

20 And if you could please turn to Exhibit 3 and
21 Exhibit 4A and 4B. Are you familiar with those documents?

22 A. Yes, ma'am.

23 Q. And how are you familiar with those documents?

24 A. These are the signs that are put up, and I believe
25 that's put up in the Reno station at Amtrak.

1 Q. And would that be in reference to 4A and 4B?

2 A. Yes.

3 Q. And as far as Exhibit 3, are you familiar what's
4 contained in the Exhibit 3?

5 A. Yes. There's the ticket sleeve that once the
6 tickets are purchased they're slid into. And --

7 Q. Is that what --

8 A. Yes.

9 Q. -- Exhibit 3 is --

10 A. Yes, I just --

11 Q. -- it's the ticket --

12 A. I just wanted to make sure the picture wasn't
13 anything more than the sleeve was. Sorry. Yes.

14 Q. Thank you. And are these true and accurate copies
15 of both a ticket sleeve and the photos of the signs posted
16 in the Reno --

17 A. Yes, ma'am.

18 Q. -- station?

19 A. Yes.

20 MS. RACHOW: I'd move for the admission of
21 Government's 3 and 4A and 4B.

22 MS. GORMAN: Your Honor, I'll object with
23 respect to -- I don't think that enough foundation has been
24 laid with respect to the Reno ones. I don't know exactly
25 where they are. They look like they're inside. And it

1 looks like this case involves a short stop on the platform.

2 So I don't think there's been a foundation laid
3 as to where these signs are and whether Mr. Estes has
4 actually received them. We don't know --

5 MS. RACHOW: Your Honor, that goes to argument,
6 not to admissibility.

7 THE COURT: Well, it will go to admissibility if
8 there's no evidence of anyone having exposure to these.

9 What I'll do is I'll reserve the ruling at this
10 time.

11 MS. RACHOW: Thank you. As far as 3, though, is
12 3 admitted?

13 THE COURT: Which one?

14 MS. RACHOW: 3 would be the ticket sleeve.

15 MS. GORMAN: Your Honor, I'll just again note
16 it -- I don't know if there's been foundation about the
17 kind of ticket that Mr. Estes had or whether he would have
18 received a sleeve. So I just don't know if that's been met
19 yet.

20 THE COURT: All right. The Court will reserve
21 ruling on that one as well.

22 BY MS. RACHOW:

23 Q. And, sir, are you familiar with the ticketing
24 practices of Amtrak?

25 A. Yes, ma'am.

1 Q. And can you explain that when somebody receives a
2 ticket from Amtrak, such as when they go to a station to
3 pick up their ticket, can you tell us what kind of
4 documentation they receive?

5 A. Yes, ma'am. They receive a -- they receive a
6 printed out ticket showing their destination, where they're
7 starting from, where their final destination is to. Maybe
8 multiple tickets. It depends on what type of trip they're
9 taking. And then it's placed into the sleeve.

10 Q. And this is -- and the sleeve as exhibited in --

11 A. Yes, in --

12 Q. -- Exhibit 3?

13 A. -- Exhibit 3, yes.

14 Q. And this is standard procedure for Amtrak?

15 A. Yes.

16 Q. So when somebody would go to pick up their ticket,
17 they would receive their ticket, and it would be in this
18 ticket sleeve?

19 A. Yes.

20 MS. RACHOW: Your Honor, with that I would move
21 for the admission of Government's 3.

22 THE COURT: All right. I --

23 MS. GORMAN: I believe there's --

24 THE COURT: Go ahead.

25 MS. GORMAN: It's just the same objection. I

1 don't know if there's been any foundation as to whether
2 this ticket was picked up at the Amtrak station, whether it
3 was just purchased online.

4 I just -- I don't know if it's relevant
5 necessarily to this case at this point.

6 THE COURT: Would you like to voir dire the
7 witness relative to alternative means by which this may or
8 may not have been attached with the ticket?

9 MS. GORMAN: I think that would be appropriate,
10 Your Honor.

11 THE COURT: All right.

12 VOIR DIRE EXAMINATION

13 BY MS. GORMAN:

14 Q. Detective Kurup, are there different ways people can
15 purchase tickets from Amtrak trains?

16 A. Yes, ma'am. You can buy the tickets that are
17 printed and put in the sleeves, and you can also do it
18 online where it is a paper printout. Does not look like
19 this sleeve, does not come with the tickets, it's just a
20 paper ticket with bar code on it.

21 So when you enter the train -- it will have your
22 reservation and everything written on there. And then
23 there's a small square bar code that the conductors can
24 scan, the same way they can scan your regular ticket. So
25 you can use that or a regular ticket.

1 Q. Okay. Thank you.

2 And do you know in this case whether the ticket
3 was purchased online?

4 A. Yes, ma'am, I do know it was not purchased online.

5 Q. And how do you know that?

6 A. Because he had a -- it was a printed out ticket that
7 comes in one of these sleeves.

8 MS. GORMAN: So I think that's sufficient for
9 voir dire, Your Honor.

10 THE COURT: All right. It will be admitted.

11 (Government's Exhibit 3 received into
12 evidence.)

13 DIRECT EXAMINATION (CONTINUED)

14 BY MS. RACHOW:

15 Q. And, sir, just to be clear, we haven't gotten to the
16 specifics of this case, we were just talking about the
17 general security measures that Amtrak puts into place and
18 how passengers are notified about these security measures;
19 is that correct?

20 A. Yes, ma'am.

21 Q. But you did testify that Mr. Estes had printed out
22 tickets. Were they attached to a ticket sleeve?

23 A. Yes.

24 Q. Now, with Government's 3 being admitted, if I could
25 turn your attention to the language under "Security."

1 A. Yes, ma'am.

2 Q. And could you please tell us what -- and please read
3 that into the record what Amtrak notifies their passengers
4 of regarding the security measures in place.

5 A. The entire --

6 Q. The entire security paragraphs.

7 A. "Amtrak has undertaken heightened security
8 measures for the benefit of our customers. Among
9 these measures, Amtrak customers are required to
10 provide acceptable identification and
11 purchasing/obtaining tickets -- when
12 purchasing/obtaining tickets, whether in stations
13 or on board trains, or checking baggage."

14 MS. GORMAN: Your Honor, I'm just going to
15 object on the hearsay basis at this point.

16 MS. RACHOW: Your Honor, this is in evidence.

17 THE COURT: Well, it's in evidence. And because
18 it's in evidence, I'll let him read the portion that we're
19 talking about.

20 THE WITNESS: "Acceptable forms of
21 identification include a valid driver's license,
22 passport, government agency ID and other specific
23 forms of identification. Ask agent for details.

24 "Amtrak has in place a range of
25 behind-the-scenes and front-line security measures

1 aimed at improving passenger rail security, some of
2 which are conducted on an unpredictable or random
3 basis. These include uniformed police officers and
4 K-9 units in stations and on trains, mobile
5 Security Teams, checked baggage screening, on-board
6 screening, security cameras and investments in
7 state-of-the-art security technology. Passengers
8 may also be randomly selected to show
9 identification aboard trains, even after they've
10 shown identification earlier when obtaining their
11 tickets.

12 "Please be advised that randomly selected
13 passengers and their baggage, handbags, backpacks,
14 or other personal items may be screened or
15 inspected. The inspection will be completed as
16 quickly as possible, usually less than a minute, in
17 a manner designed to respect passenger privacy as
18 much as possible. Passengers failing to consent to
19 security procedures will be denied access to trains
20 and refused carriage, and a refund will be offered.

21 "For their safety and security, passengers
22 should remember to be aware of their surroundings,
23 to keep all personal items secure and in close
24 proximity, and not to approach or pet police dogs.
25 Any suspicious activity or unattended luggage

1 should be reported to Amtrak Police or personnel,
2 or by calling 1-800-331-0008."

3 Q. Thank you.

4 Now, as in regard to the pictures in 4A and 4B,
5 are you familiar with the sign contained in those pictures?

6 A. Yes, ma'am.

7 Q. And are you familiar with the location of that
8 sign --

9 A. Yes, ma'am.

10 Q. -- in the Reno station?

11 A. Yes.

12 Q. Are you familiar with other Amtrak stations?

13 A. Yes, a couple other. A few.

14 Q. Are you familiar with the Chicago station?

15 A. Yes.

16 Q. And does the Chicago station have this identical
17 poster or picture regarding the security displayed in the
18 Chicago station?

19 A. Yes. In numerous areas.

20 Q. And these signs are universal throughout Amtrak?

21 A. Yes.

22 Q. So a sign in the Reno office would be the same as a
23 sign in the Chicago office?

24 A. Yes.

25 MS. RACHOW: With that I'd move for the

1 admission of 4B.

2 MS. GORMAN: Your Honor, again I'm just going to
3 object. Also, this sign looks like it's inside. And this
4 entire encounter took --

5 THE COURT: No. It's --

6 MS. GORMAN: -- place on the platform.

7 THE COURT: It's not admissible at this time.
8 Further foundation would be necessary.

9 BY MS. RACHOW:

10 Q. Sir, with this sign, is it directed to passengers?

11 A. Yes.

12 Q. And what type of information is contained in the
13 sign?

14 MS. GORMAN: Your Honor, I'm objecting to
15 hearsay at this point. I mean, we haven't established
16 where the sign is, if Mr. Estes --

17 THE COURT: Sustained.

18 MS. GORMAN: -- could see it.

19 BY MS. RACHOW:

20 Q. Sir, are you aware if this sign is universal with
21 Amtrak?

22 A. Yes.

23 Q. And is this sign placed in all Amtrak stations?

24 A. Yes.

25 Q. Across the country?

1 A. Yes.

2 Q. This same exact sign?

3 A. Yes.

4 Q. And what is the basis or what is the purpose of this
5 sign?

6 A. To advise that -- what passengers may be
7 encountering as far as security checks, what type of
8 security checks, what type of Amtrak Police presence they
9 may see.

10 Q. And this --

11 A. For security purposes. Sorry.

12 Q. I'm sorry. And the sign is displayed in every
13 station?

14 A. Yes.

15 MS. GORMAN: Your Honor, asked and answered.

16 THE COURT: This has been asked and answered,
17 Ms. Rachow. You're going to have to tie it to exposure to
18 this particular defendant if you want to get it in
19 evidence.

20 MS. RACHOW: Thank you, Your Honor. I'll move
21 on.

22 BY MS. RACHOW:

23 Q. And does Amtrak have a policy regarding travelling
24 with firearms?

25 A. Yes, they do.

1 Q. And can you tell us about that.

2 A. Yes. It has to be reported at least 24 hours prior
3 to travel. It can only travel in checked-in baggage. It
4 has to be in an approved case, hard-shell case, and locked.
5 It cannot contain ammunition. It cannot be loaded.

6 And they also have to fill out a declaration
7 also when checking in.

8 Q. And if a passenger is found to be in violation of
9 the firearms policy, can they be removed from the train?

10 A. Yes.

11 Q. And would a violation of firearms policy be carrying
12 a firearm in your carry-on luggage?

13 A. Yes.

14 Q. Were you on duty December 4th of 2014?

15 A. Yes, ma'am.

16 Q. And what were your job duties?

17 A. I was working an interdiction detail, drug
18 interdiction detail.

19 Q. What does that mean?

20 A. That means I work with the Northern Nevada
21 Interdiction Task Force, and we look for people
22 transporting illegal contraband or the profits made
23 currency-wise across the --

24 Q. Profits made from illegal --

25 A. From the --

1 Q. -- contraband?

2 A. -- sales of illegal contraband, yes.

3 Q. Have you had any specialized training regarding
4 working interdiction on the trains?

5 A. Most of the training is on the job. Also attended
6 conferences, the INIA conference.

7 Q. What is that?

8 A. International Narcotics Interdiction Association.

9 Q. And how often is that training held?

10 A. That is yearly.

11 Q. And how many years have you gone?

12 A. I have only gone once.

13 Q. What type of information is given at this type of
14 training?

15 A. All types of -- information regarding drug
16 interdiction on trains, busses, planes, parcels.

17 Q. And as part of the training, do they tell you what
18 indicators to look for?

19 A. Yes.

20 Q. And does Amtrak participate in joint interdiction
21 teams across the country?

22 A. Yes, ma'am.

23 Q. Why is Amtrak a member of joint interdiction teams?

24 A. Because they believe in stopping the flow of illegal
25 contraband through the trains, which is evident.

1 Q. When you say it's evident, what do you mean?

2 A. From the amount of seizures we get across the -- not
3 just in Reno, but we have teams in California and Florida,
4 New York, New Jersey, DC, Texas. And all of the -- we see
5 seizures of all types of illegal contraband and profits
6 made.

7 Q. How long have you been working interdiction on the
8 trains?

9 A. Three years.

10 Q. Has it all been in Reno area?

11 A. Yes, ma'am.

12 Q. And what is the first step you perform when you
13 would start an interdiction investigation?

14 A. Check the train manifest.

15 Q. And what is the train manifest?

16 A. The train manifest, when you print it up, initially
17 it is a list of all the passengers on board. And then from
18 that point on, I check further depending on -- we check --
19 or, sorry, I, I check the rooms, the people travelling and
20 the passengers.

21 Q. I'm going to back you up just one step.

22 A. Uh-huh.

23 Q. So when you run the manifest for the passengers, you
24 get the name of everybody who is on board the train; is
25 that correct?

1 A. That's correct.

2 Q. And you mentioned something about rooms. Why would
3 that be important to you?

4 A. Because rooms, they have more privacy, more chances
5 to hold luggage, if they want to conceal it from other
6 people, won't be bothered as much. And so we check the
7 rooms. We check the passengers in the room.

8 Q. And do you check every single passenger on the
9 manifest?

10 A. In the rooms, yes.

11 Q. And what are you looking for?

12 A. Different indicators. Depending on last-minute cash
13 purchases, close to travel, third-party purchases. Let's
14 see. Last-minute cash. Couple days prior. Closer.
15 Third-party purchases. Excuse me. Unattended stations,
16 where there's no personnel or anybody there, where they can
17 just get onto the train and continue their travel without
18 being bothered.

19 Q. And do you also look to see whether a ticket is one
20 way or round trip?

21 A. Yes.

22 Q. Why are these things that you've mentioned, why are
23 you looking specifically for these?

24 A. These are the indicators that we found consistent
25 with people that travel on Amtrak with the purpose of, you

1 know, transporting illegal contraband or the profits made
2 from the sales of them.

3 Q. And during your trainings, are you given indications
4 that these are the type of indicators that you should be
5 looking for?

6 A. Yes.

7 Q. And that's from an international interdiction
8 association?

9 A. Yes. Along with on-the-job training.

10 Q. When you say on-the-job training, what does that
11 mean as regards to these indicators in the manifest?

12 A. When I arrived in Reno the gentlemen that were
13 already working interdiction, learning from them, and then
14 running the manifest myself and seeing that these
15 indicators do actually show -- hold true.

16 Q. And when you say they hold true, when you flag a
17 reservation that has these certain indicators, what is your
18 next step?

19 A. We attempt to contact the person.

20 Q. And have you done any other sort of background on
21 the person at this point? Like, have you been able to pull
22 a photograph for them or run their criminal history?

23 A. For the westbound morning train, not really.

24 Q. And why not on the westbound morning train?

25 A. Just the time restraint that we have for the most

1 part.

2 Q. And the train that Mr. Estes was on that we're
3 discussing today, was that the westbound morning train?

4 A. Yes, ma'am.

5 Q. What is the average number of passengers on a
6 manifest?

7 A. On an average day, anywhere from 100 to 200
8 passengers.

9 Q. And out of that 100 to 200 passengers, how many
10 reservations that you review have had these indicators?

11 A. At the most, five to six.

12 Q. So out of the 100 to 200 people, at the most you'd
13 have five to six that have these indicators?

14 A. Yes, ma'am.

15 Q. Now, once you've made the decision that this is a
16 person that you want to do a follow-up investigation on,
17 what do you do?

18 A. We attempt to make contact with them at the room.

19 Q. And why at the room?

20 A. That's where we know them to be as where the
21 manifest would show. That's the room they're staying in.

22 Q. And if there isn't anybody in that room by the time
23 you approach the room, what do you do?

24 A. Then we go down to the platform because when the
25 train comes in to Reno, the train stops, passengers come

1 off for a breath of fresh air, smoke a cigarette, whatever
2 the case may be, just to stretch their legs.

3 Q. Is there an average length of the stop in Reno?

4 A. No. It changes because the train schedule,
5 sometimes it's not on time.

6 Q. Now, going back to December 4th of 2014, did you run
7 the manifest for the westbound Amtrak train, which would be
8 Number 5?

9 A. Yes.

10 Q. And did the Shaun Estes reservation draw your
11 attention?

12 A. Yes, ma'am.

13 Q. If you could please turn to Exhibit 2.

14 Are you familiar with Government's Exhibit 2?

15 A. Yes, ma'am.

16 Q. And how are you familiar with this document?

17 A. This was the reservation that was pulled for Shaun
18 Estes.

19 Q. Is this a true and accurate copy of the reservation
20 you were able to pull for Shaun Estes on December 4th of
21 2014?

22 A. Yes, ma'am.

23 Q. And are there notes on this particular reservation?

24 A. There are.

25 Q. Are you familiar with the notes on that reservation?

1 A. Yes.

2 Q. And what are those notes in relation to?

3 A. The -- Mr. Estes' name is circled. The name
4 Christina Rogers is circled. That is the person, as far as
5 Amtrak is concerned, that purchased the ticket.

6 The other notes that are written, December 2nd
7 is circled. That's the date of travel from Chicago. And
8 later on down the road, I believe the notes were made for
9 about -- we -- we were under the assumption that he
10 traveled from Chicago to begin --

11 Q. I'm going to stop you.

12 Are you familiar with these notes?

13 A. Yes.

14 Q. Do you know who wrote these notes?

15 A. Yes.

16 Q. And would it have been your partner, Detective
17 Moore, that wrote these notes?

18 A. That is correct.

19 Q. And are the items that are noted on this particular
20 reservation, are those the factors that you look for when
21 looking to see if there's a passenger you want to do a
22 follow-up conversation with?

23 A. That's correct.

24 MS. RACHOW: I would move for the admission of
25 Government's 2.

1 MS. GORMAN: Your Honor, I would just -- I think
2 just some clarity. If I could voir dire him on the notes
3 on the ticket because --

4 THE COURT: Go ahead.

5 VOIR DIRE EXAMINATION

6 BY MS. GORMAN:

7 Q. So, Detective Kurup, there's notes on this printout;
8 is that correct?

9 A. That's correct.

10 Q. So were these notes made on the actual piece of
11 paper?

12 A. Yes.

13 Q. That was the printout?

14 A. Yes.

15 Q. So I'm going to direct you to just looking at the
16 copy with the reference notes. It looks like the writing
17 is outside of the page, like these were notes made -- so
18 it's your testimony that these were notes made on the
19 actual printout of this piece of paper?

20 A. Yes.

21 MS. GORMAN: Your Honor, we'll --

22 THE COURT: Well, it's obvious that they weren't
23 on the original. You can attempt to clear it up.

24 I'm inclined to admit it with the exclusion of
25 the notes, which the Court would treat as excluded until

1 that's clarified. But I think the reservation form is
2 sufficiently identified to be -- and the routine
3 information on there has been sufficiently identified.

4 MS. GORMAN: I agree, Your Honor. But with
5 respect to the notes written on it, it's -- I mean, we
6 would object to that, and that's the form of the exhibit.

7 THE COURT: I'll admit it subject to further
8 clarification concerning the notes and other information
9 that's on the exhibit.

10 (Government's Exhibit 2 (absent the notes)
11 received into evidence.)

12 MS. RACHOW: Thank you, Your Honor.

13 DIRECT EXAMINATION (CONTINUED)

14 BY MS. RACHOW:

15 Q. And, sir, is it fair to say that this is a
16 photograph of the actual printout of the reservation?

17 A. Yes.

18 Q. And there are items that are behind the photocopy?

19 A. Yes.

20 Q. And is that the entirety of the document, including
21 what -- the notes are not necessarily on the document
22 itself, they may be above the document on a separate piece
23 of paper?

24 A. Yes.

25 Q. And with that -- Your Honor, Court's indulgence.

1 Your Honor, to complete the record, if I could
2 have the witness look at 2A, which has just been shown to
3 the defense.

4 This is not a Bates stamped copy, but this is an
5 actual printout of the reservation that was used in the
6 photograph --

7 MS. GORMAN: Your Honor, I'm going to object,
8 just on a discovery violation. We never received it. We
9 received the photograph of it, which was actually hard for
10 us to work with. But we never had an original printout
11 provided in discovery at all during this case.

12 THE COURT: All right.

13 Ms. Rachow?

14 MS. RACHOW: Your Honor, I don't have the Bates
15 stamped copy because I printed things out separately.

16 The information has been provided to the defense
17 in the photograph, which is an accurate copy of this. We
18 can just go off the exhibit --

19 THE COURT: The only issue --

20 MS. RACHOW: -- that's been previously marked --

21 THE COURT: -- on Exhibit 2 are the notes. I
22 don't know who put those notes there. I don't know why
23 they're there. I suspect the witness probably knows that.
24 Why don't you just ask him that.

25 And the exhibit's admitted anyway. I just

1 indicated that as to the notes I will treat them as
2 excluded until they've been made admissible.

3 BY MS. RACHOW:

4 Q. Sir, do you know who made the notes?

5 A. Yes, ma'am. Detective Moore.

6 Q. And is he your partner?

7 A. Yes, ma'am.

8 Q. Are you familiar with those notes?

9 A. Yes, ma'am.

10 Q. And since the document has been admitted, with the
11 exception of the notes, can we go through the type of
12 information that is on this exhibit?

13 A. Yes.

14 Q. Now, you mentioned indicators before; correct?

15 A. Yes, ma'am.

16 Q. And that Mr. Estes' reservation had specific
17 indicators that you were looking for?

18 A. That's correct.

19 Q. Can you tell us what they are as displayed in that
20 exhibit?

21 A. Yes. One was the date it was purchased was a few
22 days prior to travel. The other one is why Christina
23 Rogers' name is circled, third-party purchase. She lives
24 in --

25 MS. GORMAN: Your Honor, I'm just going to --

1 this witness has to testify based on his personal
2 knowledge. And now he's reading Detective Moore's notes.
3 So I'm just going to object based on --

4 THE COURT: Well, he's --

5 MS. GORMAN: -- I don't think this witness --

6 THE COURT: -- reading from what's been
7 admitted. And I'll allow it for that purpose.

8 THE WITNESS: She lives --

9 MS. RACHOW: Your Honor, is this -- I'm sorry.

10 BY MS. RACHOW:

11 Q. Sir, just to clarify, you were the one who reviewed
12 Mr. Estes' reservation; correct?

13 A. That's correct.

14 Q. And this is a photocopy of his reservation?

15 A. That's correct.

16 Q. And you noted indicators on Mr. Estes' reservation
17 that led you to believe you needed to talk to him a little
18 bit further?

19 A. Yes.

20 Q. And so you are testifying about your own personal
21 observations from the indicators on this exhibit?

22 A. That's correct.

23 Q. And you were talking about the Christina Rogers'
24 information?

25 A. Yes.

1 Q. Can you please --

2 A. Chris --

3 Q. -- tell us what you were looking at?

4 A. One being a third-party purchase, the second
5 Christina Rogers lives in -- I'm sorry, but I can't -- due
6 to the copy, what part of Pennsylvania she lives in, but
7 she lives in Pennsylvania. It's not an area that he was
8 travelling in either.

9 Again, the date it was purchased, the amount it
10 was purchased for.

11 Q. Why is the amount that it was purchased for of
12 interest to you?

13 A. It's quite a large amount when flying would have
14 been more convenient and cheaper. So it's just an
15 indicator to ask for.

16 Q. During the years that you've been working
17 interdiction, as well as your training and experience, has
18 it been common to find people with contraband who had
19 similar indicators on their tickets?

20 A. Yes.

21 Q. And how much did this one-way ticket cost?

22 A. \$970.

23 Q. Did you decide to make contact with Mr. Estes?

24 A. Yes.

25 Q. And why did you decide to make contact with him?

1 A. Because the indicators that were on his reservation.

2 Q. Had you run a criminal history check of Mr. Estes?

3 A. No.

4 Q. And did you have a DMV search done of Mr. Estes?

5 A. No.

6 Q. Did you have a photograph --

7 A. No.

8 Q. -- of Mr. Estes?

9 Did you have any idea who Mr. Estes was?

10 A. No, ma'am.

11 Q. How did you go about approaching Mr. Estes?

12 A. Once we were on the platform, the train came in and
13 people came out, I observed Mr. Estes out there smoking a
14 cigarette.

15 Q. And just for the record, you're calling him
16 Mr. Estes, but you did not know he was Mr. Estes at the
17 time?

18 A. No, I did not. I'm sorry. No.

19 Q. From Mr. Estes' reservation did you know where he
20 was seated on the train?

21 A. Yes.

22 Q. And what car he was located in?

23 A. He was in the 531 car, room number 10.

24 Q. So the train pulls into the station. People get off
25 the train. What happens next?

1 A. Then we would go up to the room to make contact with
2 the person because that's the -- where we think the best
3 chance of where they would be.

4 Q. And that's because you've never met this person and
5 you don't know who they are?

6 A. That's correct.

7 Q. In this case was Mr. Estes in the room?

8 A. No.

9 Q. And what did you do next?

10 A. Saw Mr. Estes outside smoking the cigarette, smoking
11 a cigarette. Or the individual right there. And I
12 contacted him. I approached him. I showed him my badge
13 because I was in a plainclothes capacity.

14 Q. And I'm going to stop you right there.

15 You're out on the platform at this point; is
16 that correct?

17 A. That's correct.

18 Q. Are there other people around?

19 A. Yes. Detective Moore, Officer Hill was somewhere
20 around there, and other passengers that came off the train
21 and passengers trying to get on the train.

22 Q. Who is Officer Hill?

23 A. Officer Hill is a canine officer for Reno.

24 Q. And had you called the canine officer to be at the
25 station?

1 A. He regularly comes to the station with us.

2 Q. And when you are working at the passenger manifest,
3 do you speak to the canine officer in any way?

4 A. No.

5 Q. And while you were out on the platform, were you
6 standing with the canine officer?

7 A. No.

8 Q. And is the canine officer in uniform?

9 A. Yes.

10 Q. Now, you mentioned you're in a plainclothes unit.
11 What does that mean?

12 A. We work a plainclothes capacity; so we're in regular
13 street clothes.

14 Q. And why is that?

15 A. It's so we don't cause too much attention. We keep
16 the interaction consensual. It's not embarrassing for this
17 person we're speaking to.

18 MS. GORMAN: Your Honor, I'm going to object.
19 Consent is a legal term. I'm just going to ask that the
20 witness stick to the actual facts that he can describe.

21 THE COURT: That's a fair objection. Sustained.

22 Let me caution you, Detective Kurup, just
23 describe the action that you take.

24 THE WITNESS: Yes, sir.

25 When I decide to make contact with somebody, I

1 approach. I introduce myself. Since we are in plain
2 street clothes, I shortly produce my badge. It's clipped
3 on my hip. I take it out, put in it my hand. I show it to
4 the individual, and then I place it right back and cover it
5 back up.

6 BY MS. RACHOW:

7 Q. And do you introduce yourself?

8 A. Yes.

9 Q. And what type of voice are you using? What tone?

10 A. Same voice I'm using here. Just a normal tone.

11 Q. Do you display a firearm?

12 A. No.

13 Q. Do you display any other police attire?

14 A. No.

15 Q. After you display your badge, do you keep your badge
16 out?

17 A. No, ma'am. I clip it right back on my belt and then
18 cover it back up with my shirt or sweatshirt.

19 Q. Now, you work with a partner; is that correct?

20 A. Yes.

21 Q. And why do you work with a partner?

22 A. For safety reasons. And also that part of the task
23 force, it's different agencies involved so --

24 Q. Who was your partner on December 4th?

25 A. Detective Moore.

1 Q. Now, when you made contact with this individual, who
2 is later identified as Mr. Estes, did you know where
3 Detective Moore was?

4 A. Yes. He was about several feet back and off to the
5 side.

6 Q. So he wasn't with you speaking with Mr. Estes?

7 A. No, he was not.

8 Q. And I believe you stated that you don't recall
9 exactly where the canine officer was?

10 A. No. He's usually out of sight.

11 Q. When you approached this male on the platform, did
12 you know it was Mr. Estes?

13 A. No, I did not.

14 Q. After you made contact with him, what did you say to
15 him?

16 A. Again, I introduced myself. I asked if I may speak
17 with him.

18 Q. And did he make any response?

19 A. He said yes. He replied yes.

20 Q. Do you recall if he was on the phone?

21 A. No, he was smoking a cigarette.

22 Q. After he agreed to speak with you, what did you do
23 next?

24 A. I then asked -- I then asked him if I could see his
25 train ticket and form of ID.

1 Q. And did you threaten him in any way?

2 A. No.

3 Q. Did you ask him just like you're testifying here
4 today?

5 A. Yes, ma'am.

6 Q. And did he agree to show you his train ticket and
7 his ID?

8 A. He did.

9 Q. Did you review those items?

10 A. Yes.

11 Q. And at that point were you able to identify him as
12 Mr. Estes?

13 A. Yes.

14 Q. Do you see Mr. Estes here today in court?

15 A. Yes, I do.

16 Q. Can you please state where Mr. Estes is located and
17 what he's wearing?

18 A. He's sitting with the two defense attorneys, and
19 he's wearing, I believe, orange-color shirt.

20 MS. RACHOW: May the record reflect the
21 witness's identification of the defendant?

22 THE COURT: The record will so show.

23 BY MS. RACHOW:

24 Q. After you reviewed Mr. Estes' ticket and his ID,
25 what did you do with those items?

1 A. I gave it back to him.

2 Q. So as soon as you looked at them, you gave them back
3 to him?

4 A. Yes, ma'am.

5 Q. You did not keep them?

6 A. No, ma'am.

7 Q. What did you say next to Mr. Estes?

8 A. I advised Mr. Estes as to the purpose of my contact.

9 Q. And what is that? What did you say to him?

10 A. The fact that we look for people transporting
11 illegal contraband across the train or the profits made
12 from sale of illegal contraband.

13 Q. Did you explain to him why you specifically were
14 talking to him?

15 A. Yes, I explained these are some of the indicators
16 that we're looking for and that his reservation had some of
17 those indicators.

18 Q. Did you talk to him about the specific indicators?

19 A. Yes. About the one-way travel, he purchased it a
20 couple days before, the fact it was a third-party purchase.

21 Q. And is this something you commonly do with people
22 you're interacting with?

23 A. Yes, ma'am.

24 Q. Do people usually respond when you mention the third
25 party purchased the ticket?

1 A. Yes, ma'am. If it's somebody that they know,
2 they'll say, oh, that's so and so, as a relative, as a
3 wife, husband, some type of relative, and they'll be able
4 to tell me who it is and such. They'll usually offer up
5 the information.

6 Q. Did Mr. Estes give you any information about his
7 reservation?

8 A. No, ma'am.

9 Q. Did he say anything to you?

10 A. He advised that he wasn't in possession of anything
11 illegal.

12 Q. And how was the conversation at this point? Was the
13 voices raised? Was there anything threatening on your
14 part?

15 A. No. My voice wasn't raised. Mr. Estes' voice
16 wasn't raised. It was just a normal conversation.

17 Q. Were you standing in a way that would allow
18 Mr. Estes to leave if he chose to?

19 A. Absolutely.

20 Q. Now, after Mr. Estes told you that he wasn't in
21 possession of anything illegal, what did you do?

22 A. I then asked Mr. Estes if it was okay if we searched
23 his room and his luggage.

24 Q. And do you do that on pretty much every contact you
25 have when you're running an interdiction investigation?

1 A. Yes.

2 Q. And what did Mr. Estes say?

3 A. He said no.

4 Q. Did you notice anything about his demeanor that
5 would lead you to believe he was scared?

6 A. No.

7 Q. Intimidated?

8 A. No.

9 Q. Was he making eye contact with you?

10 A. Yes.

11 Q. What was the next thing you did?

12 A. I then advised him of the next step we take is,
13 which we would call in a canine to do a scan of the room or
14 the hallway, and that if the canine alerted on the room
15 that we would seize the items and obtain a search warrant
16 for them.

17 Q. And why did you tell him this?

18 A. That's the next step that we take. We just advise
19 them that's what we would do.

20 Q. Was it to try to coerce him in any way?

21 A. No, ma'am.

22 Q. Did he express any interest about the canine?

23 A. He said he wanted to watch the scan, when the dog
24 did a scan of the hallway and of the room.

25 Q. And did you -- what did you say to him in response

1 to that?

2 A. We agreed.

3 Q. So what happened next?

4 A. Before we started the scan, I know that Mr. Estes'
5 room was open. So we asked him, "Would you like to leave
6 the door open or would you like to close it?" He advised
7 he wanted it closed. And then --

8 Q. And was that done?

9 A. Yes. Prior to the scan, yes.

10 Q. And was the canine officer already on the scene?

11 A. Yes.

12 Q. So there was no delay in having the canine?

13 A. No, ma'am.

14 Q. And is this something you typically do on a daily
15 basis?

16 A. Yes, ma'am.

17 Q. Now, when the canine is deployed, do you recall
18 where you were located?

19 A. Yes. When we come up the steps to the second level
20 of the car, right at the top of the steps, there's a little
21 bit of space, a little bit more leeway. That way we could
22 stand up there and not black -- block the flow of traffic,
23 for any passengers to move along.

24 And so myself and Detective Moore were there.

25 And Mr. Estes was there also.

1 Q. And just to be clear, Mr. Estes had asked if he
2 could come up and watch?

3 A. Yes.

4 Q. Did you restrict Mr. Estes' movement in any way?

5 A. No, ma'am.

6 Q. And where were you standing in relation to
7 Mr. Estes?

8 A. I believe I was standing in front of him, closer
9 towards the hallway.

10 Q. And did you try to stay out of Mr. Estes' personal
11 space?

12 A. Yes.

13 Q. And did you block Mr. Estes in any way?

14 A. No, ma'am.

15 Q. Could you see where your partner was?

16 A. Yes.

17 Q. And where was Detective Moore?

18 A. He was across from me.

19 Q. And was he blocking Mr. Estes in any way?

20 A. No, ma'am.

21 Q. Had you taken Mr. Estes' phone?

22 A. No, ma'am.

23 Q. Were you looking through Mr. Estes' phone?

24 A. No, ma'am.

25 Q. What were you doing?

1 A. Watching the scan.

2 Q. And how long did the scan take?

3 A. Approximately about a minute, maybe a minute and a
4 half.

5 Q. Now, can you delay the train leaving if you want to
6 conduct a canine search?

7 A. Yes.

8 Q. And did you do that in this case?

9 A. No, ma'am.

10 Q. This was still during the normal scheduled stop of
11 this train?

12 A. Yes, ma'am.

13 Q. After the canine did the scan, did the canine
14 officer remain on scene?

15 A. No, ma'am.

16 Q. Did they immediately leave the train?

17 A. Yes.

18 Q. And did you have further conversation with
19 Mr. Estes?

20 A. Detective Moore advised Mr. Estes that -- about what
21 happened with the canine scan. He --

22 Q. And what happened?

23 A. He told Mr. Estes that the canine showed interest in
24 the room. And Mr. Estes told us that he had a small
25 personal-use amount of marijuana in the room. And then I

1 asked him again if I may search the room. And he agreed.

2 Q. Why did you ask him again for consent to search?

3 A. Just asked him because -- now that we knew that
4 there was marijuana in there.

5 Q. And he told you that he had a small amount of
6 marijuana?

7 A. Yes.

8 Q. Did you threaten him again or say anything along the
9 lines of the fact that the dog had shown interest so you
10 were going to get a warrant and seize his items?

11 A. No, ma'am.

12 Q. Is the only time you mentioned anything about the
13 canine, if the canine alerted, and if there -- you would do
14 an application for a search warrant, was that prior to the
15 canine deployment?

16 A. Yes, ma'am.

17 Q. And you are confident you did not tell him --

18 MS. GORMAN: Your Honor, asked and answered.

19 MS. RACHOW: Your Honor, this is a very
20 important point. And I just want to make sure we're all
21 very clear.

22 THE COURT: I think it is clear.

23 MS. RACHOW: Thank you, Your Honor.

24 BY MS. RACHOW:

25 Q. You asked Mr. Estes' permission to search. And what

1 did he say?

2 A. He said, yes. He agreed.

3 Q. And what happened next?

4 A. I followed Mr. Estes back to the room. When we got
5 to the room, the -- I observed there was a red duffel bag
6 on top, on the top bed. There was two separate beds.

7 Q. Now, you are going back to the room with Mr. Estes.
8 Have you detained him in any way?

9 A. No, ma'am.

10 Q. Do you have handcuffs on him?

11 A. No, ma'am.

12 Q. Have you told him he must come with you?

13 A. No, ma'am.

14 Q. And where is he in relation to you when you guys are
15 walking back towards the room?

16 A. He is in front of me.

17 Q. When you guys get to the room, is he the one who
18 opens the door?

19 A. Yes, ma'am.

20 Q. And then you mentioned you saw this red bag?

21 A. Yes.

22 Q. On the top bunk?

23 A. Yes, ma'am.

24 Q. What happened then?

25 A. Mr. Estes grabbed the bag, put it back onto the

1 bottom -- onto the bottom bunk. Then he removed a
2 gray-in-color Zales jewelry box and opened it and gave me
3 the small bag of weed, of marijuana.

4 Q. Where did he remove the Zales bag from?

5 A. From one of the side pockets.

6 Q. Of the red bag?

7 A. Yes, of the red duffel bag.

8 Q. But to be clear, he was the one who removed the bag?
9 He was the one who opened the bag?

10 A. Yes, ma'am.

11 Q. After he showed you the marijuana, what did you do?

12 A. I continued on with -- oh, I put the marijuana down,
13 placed it right back on the box, and just moved it to the
14 side, and continued on with the search.

15 Q. Did you tell Mr. Estes anything about the small
16 amount of marijuana?

17 A. No. Not at the time.

18 Q. Did you tell him he was under arrest?

19 A. No.

20 Q. Did you put him in handcuffs?

21 A. No.

22 Q. Did you tell him that you were going to kick him off
23 the train?

24 A. No.

25 Q. Now, when you went into the bag, what did you find?

1 A. I found personal items, clothing. And then one of
2 the items was a blue pair of jeans, PD something brand of
3 jeans.

4 In the front left pocket I found a Sig Sauer 9
5 millimeter handgun, one with the magazine inserted into it.
6 There was no round chambered in it.

7 And at that point I advised Detective Moore of
8 what I found and told him that -- and told Mr. Estes that
9 he was in violation of the Amtrak firearms policy because
10 there was nothing on his record about saying that he
11 checked in a firearm or registered a firearm with Amtrak
12 travelling.

13 Q. And when earlier you were talking about the Amtrak
14 firearms policy, you were very clear that if a person is
15 going to be carrying with a firearm they need to have a
16 declaration form filled out?

17 A. Yes.

18 Q. And when you were running the passenger manifest,
19 were you able to see or tell if any of the reservations
20 would have had a firearm declaration?

21 A. Yes.

22 Q. And Mr. Estes did not?

23 A. No, ma'am.

24 Q. So this was a violation of the firearms policy?

25 A. Yes.

1 Q. Was the decision made that he was going to be
2 removed from the train?

3 A. Yes, ma'am.

4 Q. And why was he going to be removed from the train?

5 A. For the violation of the firearms policy.

6 Q. Is that within your discretion to do as a detective
7 with Amtrak?

8 A. Yes, ma'am.

9 Q. Where was Detective Moore at this point?

10 A. Detective Moore was outside -- near the outside of
11 the room at this point.

12 Q. And what happened now that you found this firearm
13 and you have this violation of the policy?

14 A. We were going to remove him from the train, so we
15 made sure that all of his items were taken with him to
16 remove from the train. And we were going to go
17 downstairs -- Detective Moore suggested we go downstairs
18 and talk to him because that's where we were going to exit
19 the train from.

20 Q. Has anything about the manner that -- in which
21 you're speaking to Mr. Estes changed at this point?

22 A. No.

23 Q. Have you threatened to arrest him?

24 A. No.

25 Q. Are you -- do you have him detained?

1 A. No.

2 Q. Have you handcuffed him?

3 A. No.

4 Q. And you said that Detective Moore suggested that you
5 went downstairs?

6 A. Yes.

7 Q. And could you hear Mr. Estes' response?

8 A. Mr. Estes agreed. I don't know exactly what he
9 said.

10 Q. And did you remove Mr. Estes' items from his room?

11 A. Yes.

12 Q. When you got downstairs, what happened?

13 A. We went downstairs and Detective Moore was speaking
14 with Mr. Estes. Detective Moore ran -- checked with the
15 local RPD system, or had them check NCIC to see if
16 Mr. Estes had any wants or warrants, which he did not. And
17 dispatch advised Detective Moore that Mr. Estes had a prior
18 felony.

19 Q. With that, had you been able to exit the train?

20 A. At that point no.

21 Q. And why could you not exit the train?

22 A. The train had already been moving.

23 Q. Now, prior to receiving a records check that
24 Mr. Estes had a previous felony conviction, was Mr. Estes
25 in handcuffs?

1 A. No.

2 Q. Was he under arrest?

3 A. No.

4 Q. Was Mr. Estes speaking with you and Detective Moore?

5 A. Yes.

6 Q. Did he appear to be scared of you?

7 A. No.

8 Q. And Mr. Estes is a fairly large person; is that
9 true?

10 A. Yes.

11 Q. After it was determined that he was a convicted --
12 or that he had a prior conviction for a felony, what
13 happened?

14 A. Then he was placed under arrest. He was put into
15 handcuffs.

16 Q. And where were you all at this point?

17 A. At the same -- in the same lower level, near the
18 exit of the bottom level of the car.

19 Q. How was the train going to be stopped so you all
20 could get off?

21 A. I contacted the conductor and let him know that the
22 train had to be stopped as soon as possible. We stopped in
23 Verdi.

24 Q. Now, while you're all on the train, has anyone read
25 Mr. Estes his Miranda rights?

1 A. No.

2 Q. Are you speaking to Mr. Estes?

3 A. At this point?

4 Q. Yes.

5 A. No.

6 Q. And this is after he's been arrested, just to be
7 clear?

8 A. Yes.

9 Q. Do you ask him any questions?

10 A. No.

11 Q. Does Mr. Estes make any statements?

12 A. Mr. Estes, at one point, I know, advised that he --
13 the gun was for personal protection. He purchased it from
14 a pawn shop in Arkansas for about \$200, I believe.

15 Q. And did you ask him any follow-up questions?

16 A. No.

17 Q. Was the train stopped?

18 A. Yes.

19 Q. And where did the train stop?

20 A. In Verdi.

21 Q. What happened when the train stopped in Verdi?

22 A. We exited the train. We were met by Officer Welch.
23 And I believe Officer Hill was there also. And Officer
24 Welch was going to be transporting Mr. Estes back.

25 Q. And is that common procedure?

1 A. Yes, in a situation like this.

2 Q. Was Mr. Estes given his Miranda rights after you all
3 had gotten off the train?

4 A. Yes.

5 Q. Were you the one who did that?

6 A. No.

7 Q. Could you hear your partner doing that?

8 A. Yes.

9 Q. And could you hear Mr. Estes' response?

10 A. He advised that he understood his Miranda rights.

11 Q. Did he agree to speak with Officer -- or, excuse me,
12 Detective Moore?

13 A. Yes. He -- he's talked to Detective Moore about
14 where he purchased the firearm from.

15 Q. How would you describe Mr. Estes' demeanor at this
16 point?

17 A. Still a normal tone.

18 Q. Did he appear to be calm?

19 A. Yes.

20 Q. And after Detective Moore was finished speaking with
21 Mr. Estes, was Mr. Estes transported to the jail?

22 A. Yes.

23 MS. RACHOW: I don't have any further questions.
24 Thank you.

25 THE COURT: All right.

1 Cross-examination?

2 MS. GORMAN: Pardon me, Your Honor?

3 THE COURT: Pardon?

4 MS. GORMAN: I thought you said something, Your
5 Honor.

6 THE COURT: I said "Cross-examination?"

7 MS. GORMAN: Oh, okay. That would make a lot of
8 sense.

9 CROSS-EXAMINATION

10 BY MS. GORMAN:

11 Q. Good afternoon, Detective Kurup.

12 A. Good afternoon.

13 Q. So, Detective, the government asked you in her
14 direct examination about the folding that encases tickets
15 on Amtrak.

16 A. Yes, ma'am.

17 Q. Is that correct?

18 A. Yes, that's correct.

19 Q. Okay. So then according to that small print that
20 you read to this Court, if passengers don't want to be
21 searched, they have a right to a refund; is that right?

22 A. That's correct.

23 Q. Okay. I mean, they also have the option to leave
24 the train?

25 A. That's correct.

1 Q. And that's Amtrak's policy?

2 A. Yes.

3 Q. At any point in this case, did you ever offer
4 Mr. Estes a refund?

5 A. No.

6 Q. Okay. Did you ever advise him that he had the right
7 to leave this train?

8 A. He always knew that he had the right to move
9 about --

10 Q. I'm not --

11 A. -- freely.

12 Q. So I'm going to ask you a very specific question --

13 A. Okay.

14 Q. -- and I'm going to ask that you answer that
15 question.

16 A. Okay.

17 Q. Did you advise Mr. Estes that he had the right to
18 leave this train?

19 A. No.

20 Q. Okay. Thank you.

21 So, Detective, were you trained that the Fourth
22 Amendment governs your interaction with passengers on
23 Amtrak?

24 A. Yes.

25 Q. Okay. Were you trained that the Fifth Amendment

1 governs your interaction with passengers on Amtrak?

2 A. How so, ma'am? I'm --

3 Q. The Fifth Amendment?

4 A. Could you --

5 Q. The right not to incriminate yourself, one.

6 A. That's correct.

7 Q. So you were trained about that?

8 A. Yes.

9 Q. Okay. And you understand that that -- those govern
10 your interaction with citizens?

11 A. Yes.

12 Q. Okay. Now, you're on the Northern Nevada Drug
13 Interdiction Task Force?

14 A. Yes.

15 Q. And part of your job is then to investigate and
16 arrest people travelling on Amtrak with drugs or drug
17 money?

18 A. Yes.

19 Q. Now, I want to talk to you about the indicators on
20 the ticket that you use to decide who to target for
21 investigation.

22 So you testified that you look at ticket
23 information to decide who to target for your investigation;
24 is that right?

25 A. That is who I want to speak to, yes.

1 Q. Yes. And one of those indicators you look for is a
2 cash purchase?

3 A. Yes.

4 Q. And the reason you look for cash purchases is
5 because cash is not traceable?

6 A. That's correct.

7 Q. And another indicator would be purchase of a ticket
8 immediately prior to boarding?

9 A. Yes. It's another indicator.

10 Q. Or starting a trip at an unmanned station?

11 A. That's correct.

12 Q. Now, you also observe people on the train and on
13 platforms; is that right?

14 A. That's right.

15 Q. And an indicator might be being excessively nervous;
16 is that right?

17 A. Among others it could be, depending on the factors.

18 Q. So I'm just going to ask you whether being
19 excessively nervous is an indicator that you look for
20 sometimes?

21 A. Sometimes, yes.

22 Q. Okay. So is reacting strangely to maybe the
23 presence of a drug canine, is that an indicator for you?

24 A. Yes.

25 Q. Now, are you aware of any research that connects

1 people's ticket purchasing behavior with their likelihood
2 of being a drug courier?

3 A. Any research?

4 Q. Any research?

5 A. No, ma'am.

6 Q. Okay. Are you aware of any statistics that, for
7 example, X amount of people who use cash to buy a train
8 ticket are drug mules?

9 A. No, ma'am.

10 Q. And to your knowledge, does Amtrak collect data on
11 how many people who have one or more of these indicators
12 turn out to be drug couriers?

13 A. Not to my knowledge.

14 Q. Not to your knowledge. Okay.

15 And, to your knowledge, does the Reno Police
16 Department collect data on this?

17 A. I do not know.

18 Q. Okay. But you don't keep statistics on your own?

19 A. No.

20 Q. Okay. And you have in the past identified people as
21 suspicious who have some of these indicators only to find
22 that they are not transporting contraband or money from
23 contraband sales?

24 A. That's correct.

25 Q. Now, you singled out Mr. Estes as suspicious because

1 of indicators on his reservation?

2 A. That's correct. That's why I decided to talk to
3 him.

4 Q. Okay. And those indicators made you suspicious he
5 might be a drug trafficker?

6 A. Or some type of illegal contraband, yes.

7 Q. Now, the first indicator was that Mr. Estes booked
8 his ticket on November 29th for travel beginning on
9 December 2nd; is that right?

10 A. That's correct.

11 Q. So that would be three days before travel?

12 A. Yes.

13 Q. Okay. Now, I'm going to direct you to Exhibit 115.

14 Now, can you tell me what that is? And I'll
15 give you a second to find it.

16 A. It's from the Reno Police Department records and ID.

17 Q. So 115 should be the ticket, the same ticket that
18 the government has shown you on direct, the ticketing
19 information for Mr. Estes.

20 A. No. Unless I'm -- oh, excuse me. One second. I'm
21 sorry. Yes. Yes.

22 Q. Okay. Now, is that the entirety of the information
23 you had about Mr. Estes before you targeted him for
24 investigation?

25 A. This is the reservation I printed out, yes, for

1 Mr. Estes and had the indicators on it, yes.

2 Q. Okay. And so this shows that this is an emergency
3 exchange voucher; is that correct?

4 A. At the very bottom of it -- no, it also shows
5 that -- at the very bottom you could see where it says "DS"
6 three times, what -- the monetary amount next to it, that
7 it was paid with a Discover Card.

8 Q. So I understand --

9 A. And underneath that there's an exchange.

10 Q. -- it was paid with a Discover Card.

11 I'm just going to ask you whether this is an --
12 whether this ticket reflected that it was an emergency --
13 that there was an emergency exchange voucher?

14 A. Yes.

15 Q. Okay. And that was issued because of a late train?
16 You can take a minute.

17 A. Yes.

18 Q. Okay. So this doesn't actually even show the
19 whole --

20 THE COURT: Let me interrupt a second.

21 What is an emergency exchange voucher? And what
22 on this ticket indicates that there was one here?

23 THE WITNESS: It says under -- at the very
24 bottom, it says -- under where the monetary values are, at
25 the very end, the last one for 589, that "EX," that's the

1 abbreviation for exchange voucher.

2 Also above midway under Ms. Rogers' address,
3 right underneath that, sir, is "Emergency Exchange Voucher"
4 with asterisks on both sides.

5 THE COURT: And, again, what does that typically
6 indicate?

7 THE WITNESS: If there was some issue with the
8 travel, whether -- for whatever reason. If there was some
9 type of weather problem, problem with the train, you got
10 held over somewhere, Amtrak will, you know, in certain
11 situations, pay for your hotel, pay for your overnight
12 stay, and make arrangements for you to travel another time,
13 and give you an emergency voucher.

14 THE COURT: Okay. Thank you.

15 I'm sorry to interrupt. I didn't know.

16 MS. GORMAN: No. No. That's perfectly fine,
17 Your Honor.

18 BY MS. GORMAN:

19 Q. So this is an emergency exchange voucher?

20 A. Yes.

21 Q. And it was issued because of a late train?

22 A. Yes.

23 Q. Okay. So it actually doesn't even show the original
24 itinerary made by Mr. Estes, does it?

25 A. No.

1 Q. Okay.

2 A. This is just what we print out.

3 Q. So you didn't even know, when you were looking at
4 these indicators and you see this emergency exchange
5 voucher, what his actual itinerary was? That he had
6 booked?

7 A. As far as his travel is concerned?

8 Q. Yes. On the voucher it shows he was travelling from
9 Emeryville to -- Chicago to Emeryville?

10 A. Yes, I see that. Uh-huh.

11 Q. So -- okay. This doesn't actually show the original
12 itinerary that he had purchased, does it?

13 A. No.

14 Q. Okay. So you didn't even know where he actually had
15 started from?

16 A. No. Unless it's listed in his history.

17 Q. Okay. Well, this is the information that you had at
18 the time?

19 A. Yes.

20 Q. Okay. So you didn't even know where his -- what his
21 original itinerary was?

22 A. No.

23 Q. Okay. So -- and this doesn't even show that he was
24 travelling from Little Rock, Arkansas; is that right?

25 A. That is correct.

1 Q. Okay. So this is one of the indicators that you
2 list as one of the indicators that encouraged you to target
3 Mr. Estes for investigation?

4 A. Is what?

5 Q. Is this itinerary?

6 A. Yes.

7 Q. Okay. Now, so the 11/29 purchase of the ticket,
8 could we agree that there could be many reasons why
9 somebody would want to book a ticket a few days before
10 travel?

11 A. That's correct.

12 Q. Okay. It could be a family emergency?

13 A. That's correct.

14 Q. It could be not getting the money together on time?

15 A. Yes.

16 Q. And the second -- okay. So that is the first
17 indicator, then, is this three-day-before-travel
18 information that you had from the emergency exchange
19 voucher; correct?

20 A. No. The first indicator that I noticed was the
21 third-party purchase was the first indicator.

22 Q. So I'm sorry. I am not trying to not track with
23 you. That was one of the indicators?

24 A. Yes, that was one of the indicators, yes.

25 Q. Okay. The first that I'm discussing?

1 A. Yes, ma'am. Yes.

2 Q. Okay. So the second -- my second indicator, just to
3 be clear, is that somebody else paid for Mr. Estes' ticket
4 in this case?

5 A. That's correct, ma'am.

6 Q. Okay. And you knew that somebody else paid for
7 Mr. Estes' ticket because it was bought with a credit card;
8 right?

9 A. Yes.

10 Q. Okay. So now you had pur- -- you testified that
11 purchasing tickets in cash is considered to be suspicious;
12 right?

13 A. Yes.

14 Q. Okay. But a credit card is traceable?

15 A. That is correct.

16 Q. All right. And when you see a credit card
17 reservation, you see the name of the credit card owner?

18 A. That is correct.

19 Q. Okay. And their credit card number?

20 A. Yes.

21 Q. And the billing ZIP code?

22 A. That's correct.

23 Q. And in this case the purchaser was Christina Rogers?

24 A. That's correct.

25 Q. Okay. So you don't know, and you didn't know at

1 that time, whether Christina Rogers was Mr. Estes' wife?

2 A. No, I did not.

3 Q. You didn't know if it was his aunt?

4 A. No, ma'am.

5 Q. Or his friend?

6 A. No.

7 Q. Okay. But you had all that information about her?

8 A. Yes.

9 Q. So that's the second indicator here?

10 A. Yes.

11 Q. Okay. Now, the third indicator is -- that you and
12 Detective Moore used in this case, is that Mr. Estes was
13 travelling from the eastern, I guess, half of the United
14 States to California?

15 A. The fact that he's travelling from the Midwest to
16 California?

17 Q. Well, I mean, clearly he wasn't travelling from the
18 Midwest. But it was --

19 A. As --

20 Q. I'm just going to -- so I'm going to direct you,
21 then, to Exhibit 101.

22 So, now, isn't it true that one of the
23 indicators that you used was travelling from the Eastern
24 United States to the state of California?

25 And I'll just give you a minute to read that.

1 MS. RACHOW: And, Your Honor, objection for the
2 record. There's been no foundation as to how 101 would
3 refresh his recollection. There's no indication that 101
4 was authored by this witness. And this witness never
5 testified to anything about that being one of the factors
6 he looked for with Mr. Estes.

7 THE COURT: Sus --

8 MS. GORMAN: Your Honor, I'll lay --

9 THE COURT: Well, the --

10 MS. GORMAN: -- a more proper --

11 THE COURT: -- is sustained. But it's not being
12 offered yet. And I'm not sure why you showed it to him.

13 MS. GORMAN: So -- you're right, Your Honor.
14 I'm going to -- and I apologize. I'm going to back up a
15 second.

16 BY MS. GORMAN:

17 Q. Detective Kurup, can you tell me what Exhibit 101
18 is?

19 A. I believe this is Detective Moore's supplement.

20 Q. Okay. So now does this -- is it a -- is it a
21 probable cause affidavit?

22 A. Yes.

23 Q. Okay. And was it authored by your partner;
24 Detective Moore?

25 A. Yes.

1 Q. Okay. And does it pertain to this case?

2 A. Yes.

3 Q. Okay. So -- and I'll just ask you, is one of the
4 indicators that you use the fact that Mr. Estes was
5 travelling to the state of California from Eastern United
6 States somehow -- somewhere?

7 A. We do look at travel, yes, as far as distance-wise,
8 from where you're coming from to where you're going to.

9 Q. So --

10 A. Is it one of the -- oh, go -- sorry.

11 Q. I'm just going to be clear.

12 Is it not an indicator for you that someone is
13 travelling from the east to California?

14 A. It could be one of the indicators, yes.

15 Q. Okay. Was it an indicator in this case, for you?

16 A. I went with the amount, the third-party purchase,
17 and how soon it was purchased before travel. That was one
18 of the indicators that I had.

19 Q. Were those the only indicators that you used in this
20 case?

21 A. Yes.

22 Q. Okay. So those are the two indicators.

23 So for you, the eastern to California, not --

24 A. It -- I have used those indicators before, yes.

25 Q. But it was not used in this case?

1 A. No.

2 Q. Okay. So, Officer, I'd like to talk to you about
3 the timeline of this investigation.

4 So you wrote a police report in connection with
5 this case; is that correct?

6 A. That's correct.

7 Q. Okay. And I'm going to show you what's been marked
8 as Exhibit 102.

9 So is that your police report?

10 A. Yes.

11 Q. Okay. So now turning to page 1, you have a really
12 specific time for when this incident was reported. Can you
13 tell me what that time is?

14 A. 1200 hours.

15 Q. So I'm going to direct you to page 1. Pardon me.
16 I'm not sure if I said that.

17 A. I thought you meant on the --

18 Q. No, not the narrative portion. Just page 1 --

19 A. Sorry.

20 Q. -- of the police report. I apologize.

21 A. Reported at 11:13.

22 Q. Okay. And that would have been the time that you
23 decided to target Mr. Estes for your investigation?

24 A. It could have been.

25 Q. So you wrote a really specific time on the police

1 report.

2 A. Yes. Okay.

3 Q. Can you tell me why?

4 A. That's usually when it's called in.

5 Q. When it's called in.

6 A. Yes.

7 Q. And what do you mean by called in? Can you tell the
8 Court what that means?

9 A. Called in -- when Detective Moore calls in to
10 dispatch to retrieve a case number.

11 Q. Okay. And so 11:13 would be the time that Detective
12 Moore called in to dispatch?

13 A. Yes.

14 Q. Okay. So I'm going to show you -- I'm going to ask
15 that you turn to Exhibit 107. Can you tell me what that
16 is?

17 A. Calls-for-service log for Reno PD.

18 Q. So -- and can you tell the Court and just everybody
19 here, what is a call-for-service log?

20 A. I do not know, as this is Reno PD stuff.

21 Q. So you've -- have you never seen a -- so you've
22 never seen a dispatch log?

23 A. No, not with Reno PD.

24 Q. Okay. But it's your testimony that 11:13 is when
25 Detective Moore called in?

1 A. I believe so.

2 Q. Okay. And would you be surprised if it was
3 Detective Hill that had actually called in at 11:13?

4 A. It could have been, depending on who was there.

5 Q. Okay. But it's your testimony you didn't talk to
6 Detective Hill before this encounter started?

7 A. I did not speak to Officer Hill before the encounter
8 started.

9 Q. Okay. So -- but that's -- so 11:13 would be the
10 time somebody made a call in to dispatch; right?

11 A. Yes.

12 Q. And you were the one that input that into your own
13 police report?

14 A. What's that?

15 Q. And you were the one that put that into your police
16 report, 11:13?

17 A. No. I believe I put 12:00.

18 Q. I'm just --

19 A. Into the --

20 Q. -- the first page of your police report?

21 A. Sorry.

22 Yes, it's -- I believe it's an automated tab.
23 When you hit the button, the time of the call comes in --

24 Q. Okay. So somebody --

25 A. -- or the information --

1 Q. -- called --

2 A. Yes.

3 Q. -- dispatch about Mr. Estes at 11:13?

4 A. About our encounter, yes.

5 Q. Okay. About your encounter with Mr. Estes. Okay.

6 So I'm going to have you now turn to page 4 of
7 your police report. Can you tell me according to your
8 narrative about what time you wrote this investigation
9 began?

10 A. 12. 1200 hours.

11 Q. Okay. And you specifically note in your report it
12 was approximately?

13 A. Yes.

14 Q. Okay. And you do that because it can be 5, 10, 15
15 minutes off?

16 A. Yes.

17 Q. Okay. Now, I'd like you to turn back to Defense
18 Exhibit 101, the probable cause affidavit.

19 And can you tell me what time Detective Moore
20 lists?

21 MS. RACHOW: Objection. This witness has
22 already testified this is not his report. And asking him
23 to state into the record what some other witness said is
24 hearsay.

25 MS. GORMAN: Your Honor, I'm not asking him to

1 state into the record. I'm asking whether a time that was
2 written by his partner is accurate or not.

3 And I'm not sure what the actual legal basis of
4 the objection would be. You don't need to author something
5 to be asked about it.

6 THE COURT: You can ask him if he's aware what
7 time that Officer Moore would have called in, if he's
8 aware.

9 BY MS. GORMAN:

10 Q. Are you aware what time Officer Moore reported this
11 incident beginning?

12 A. No.

13 Q. Okay. Would you be surprised if it was 20 minutes
14 before you had reported it?

15 A. Again, it just depends on what's going on at the
16 time, ma'am. I would not be surprised. It just depends.

17 Q. Okay. And because sometimes when you write the
18 time, it can be off?

19 A. Sometimes, yes.

20 Q. All right. Now, Mr. Estes was the target of this
21 investigation, you've already testified, before he ever got
22 off this train; is that right?

23 A. That we wanted to speak with him, yes.

24 Q. Okay. And you had testified on direct that you had
25 never discussed Mr. Estes with Officer Hill before?

1 A. That's correct.

2 Q. Before you called him out?

3 A. That's correct.

4 Q. Okay. And that's still your testimony now?

5 A. Yes.

6 Q. So, Officer Kurup, you were armed; is that right?

7 A. Yes.

8 Q. Okay. And you had your cover officer?

9 A. Yes.

10 Q. That was Detective Moore?

11 A. Yes.

12 Q. And was he armed, to the best of your knowledge?

13 A. Yes.

14 Q. Okay. And he was a few feet away from you?

15 A. Several.

16 Q. And off to the side?

17 A. Yes.

18 Q. Okay. And Officer Hill was on scene as well?

19 A. Yes.

20 Q. So can you tell me where exactly Officer Hill was?

21 A. I do not know. It's usually somewhere out of sight.

22 Q. Somewhere out of sight?

23 A. Yes.

24 Q. Okay. So you walked up to Mr. Estes?

25 A. Yes.

1 Q. Okay. And you displayed your badge?

2 A. Yes.

3 Q. Okay. And you identified yourself as a police
4 officer?

5 A. Yes.

6 Q. Okay. And you asked him for his train ticket?

7 A. Yes.

8 Q. And you asked him for his photo identification?

9 A. Yes.

10 Q. Okay. And Mr. Estes was smoking a cigarette when
11 you approached him?

12 A. Yes.

13 Q. Okay. Now, did you -- now, Mr. Estes -- is it your
14 testimony Mr. Estes was not on the phone when you
15 approached him?

16 A. Yes.

17 Q. Okay. And so you did not direct Mr. Estes to hang
18 up the phone?

19 A. No, ma'am.

20 Q. Okay. And you didn't write anything about Mr. Estes
21 being on the phone in your police report?

22 A. No, ma'am.

23 Q. Is that correct?

24 A. That's correct.

25 Q. And have you been made aware that there -- that

1 there is a woman named Erika Dean who states that she was
2 on a phone call with Mr. Estes?

3 A. Yes.

4 Q. Okay. So you have been made aware of that?

5 A. Yes.

6 Q. Okay. Now, is it also your testimony that Mr. Estes
7 was never prevented from picking up his phone throughout
8 this entire encounter?

9 A. Yes.

10 Q. Okay. And that the phone was not just ringing the
11 whole time?

12 A. No.

13 Q. Okay.

14 A. Not to my knowledge.

15 Q. So as part of your police reports, you write down
16 certain biographical information about people you arrest;
17 is that right?

18 A. As pertaining to?

19 Q. Biographical information. Like about their phone
20 numbers, for example?

21 A. Sometimes, yes.

22 Q. Okay. Well, in this case, then, can I direct you to
23 your police report. It's Exhibit 102.

24 A. Oh, okay.

25 Q. Can you tell me what phone number you have written

1 down for Mr. Estes?

2 And just to make it quicker, it's on page 2
3 towards the top.

4 A. 702-272-8072.

5 Q. So, Your Honor, as this Court is aware, we had -- we
6 did a motion to this Court for a subpoena for Mr. Estes'
7 phone records for that number. And at this point, I'm
8 going to give copies to those exhibits to the government
9 and to the witness for further examination. And we'll lay
10 a foundation. But just my proffer to the Court.

11 THE COURT: All right.

12 MS. GORMAN: So, Your Honor, I just want the
13 record to reflect I'm going to hand a business record
14 affidavit to the Court, to the witness, and to the
15 government.

16 THE COURT: The record will so show.

17 MS. GORMAN: So, Your Honor, I'm just going to
18 give your courtroom deputy some time to --

19 So, Your Honor, may I proceed?

20 THE COURT: Yes. Go ahead.

21 MS. GORMAN: So, Your Honor, first -- again, as
22 this Court knows, we did a 17(b) motion to the Court where
23 we laid out exactly, moment by moment, what Mr. Estes and
24 Erika Dean had said about their phone conversation.

25 And then this Court granted us a subpoena. So

1 we've also obtained Exhibit 125. That's a business record
2 affidavit for the entirety of the phone records that this
3 Court ordered that T-Mobile produce.

4 So we have a business record affidavit to
5 authenticate, then, Exhibit 126 is the entirety of the
6 records. 127 and 28, because the writing was so small and
7 we can't touch it because it's an original exhibit, we had
8 our paralegal essentially pull out just the -- I think it
9 was just maybe the hour around this encounter.

10 And there's one version which is color-coded
11 with an index, just for examination, and then the other
12 version is blank. But those are all from the original
13 records.

14 THE COURT: And the significance of the color
15 coding?

16 MS. GORMAN: The significance of the color
17 coding is ease for cross-examination. It's essentially a
18 demonstrative.

19 So we would move right now to have the records
20 introduced. And then we'll use the demonstrative. I think
21 it's easier for examination of a witness.

22 THE COURT: All right.

23 Ms. Rachow?

24 MS. RACHOW: Well, Your Honor, I would note that
25 the government has never received these. And under the

1 rules of evidence when you intend to go by a declaration of
2 business records, you're supposed to give the adverse party
3 notice in writing a few days prior, at least, so the party
4 can make an objection if they need the live witness.

5 And in addition the government not being able to
6 review these, I don't know that what their paralegal has
7 produced prior to this hearing is accurate, since I've
8 never had the opportunity to look at it before this very
9 moment.

10 THE COURT: Ms. Gorman?

11 MS. GORMAN: So, Your Honor, no notice is
12 required. This is impeachment. It's also not hearsay. We
13 have a business record affidavit.

14 And specifically we have these rules for
15 impeachment because when you have essentially objective
16 evidence of something, the only way -- I mean, we don't
17 know how a live witness is going to testify. So in this
18 case if Detective Kurup had said yes, they were on the
19 phone -- I mean, this tracks minute by minute this
20 encounter. And this is --

21 THE COURT: Ms. --

22 MS. RACHOW: Your Honor --

23 MS. GORMAN: -- the phone number written in the
24 police report.

25 MS. RACHOW: With all due respect, she's asked

1 Mr. Madhu Kurup about the phone number. That's in the
2 record. So clearly she knew that that was the phone number
3 he would acknowledge.

4 But realistically with the phone records, what's
5 she's impeaching him to? The ringer may not have been on.
6 He stated he did not hear the phone ring.

7 MS. GORMAN: So, Your Honor, obviously we have
8 not examined him yet and --

9 MS. RACHOW: I'm sorry. And, again, I don't
10 have an opportunity to look through the records to make
11 sure this is accurate because at the last minute I've been
12 handed God knows how many pages with extremely small
13 writing on it. And I don't know that this is an accurate
14 representation in their example that they've pulled out.

15 THE COURT: Okay.

16 MS. GORMAN: So, Your Honor, we're happy to give
17 the actual -- the only relevant parts of the records are
18 about the six or seven lines that we actually pulled out.
19 And they're really easy to find. It's all done by date and
20 time. And we're happy to give the government a few minutes
21 with those records before we examine this witness.

22 THE COURT: All right. I'm going to allow --
23 because of the nature of the hearing, and that is a
24 judge-tried matter, I'm going to allow you to go ahead and
25 ask your questions. But I want to caution you that he's

1 not qualified to testify as to what the records are or are
2 not. Perhaps they do facilitate the course of your
3 cross-examination, and I respect that. So you can ask
4 those questions that you feel that he would be competent to
5 answer.

6 MS. GORMAN: Your Honor, I mean, we are prepared
7 to ask him about the times and what the records reflect.
8 And, of course, this -- I mean, there's substantive
9 evidence. This Court can see it as well. But I think it's
10 important that this witness at least be asked about it or
11 given a chance to --

12 THE COURT: I'll allow --

13 MS. GORMAN: It's impeachment.

14 THE COURT: -- you to ask the questions that are
15 limited to the specific relevancy of this
16 particular matter.

17 MS. GORMAN: Of course, Your Honor.

18 And just Court's indulgence for a moment.

19 THE COURT: Yes.

20 BY MS. GORMAN:

21 Q. So, Officer, I'd like to direct you to Exhibit 127.
22 So can I direct you to line 6780.

23 Can you tell me what the calling number is?

24 A. 702-272-8072.

25 Q. Can you tell me if that's the same number that you

1 have written on your police report as Shaun Estes'
2 telephone number?

3 A. That's correct.

4 Q. So that was the calling number. Can you tell me
5 then who the called number was?

6 A. 1-415-368-9164.

7 Q. Okay. Can you tell me the date?

8 A. 12/4/2014.

9 Q. Is that the same date as this encounter you had with
10 Mr. Estes?

11 A. That's correct.

12 Q. Can you tell me the time?

13 A. 11:43:10.

14 Q. Now, I'm going to ask you to look at the call -- or
15 the lines going down those calls. Can you tell me -- can
16 you tell me about -- so just looking at the next line down,
17 was there another call to this number?

18 MS. RACHOW: Your Honor, I'm going to object.
19 She's asking this witness to read this into the record. He
20 does not have any personal knowledge.

21 If she's cross-examining him about whether or
22 not he heard the phone ring, that's one thing. But she's
23 using him to read this into the record when he's never seen
24 this before and he did not prepare this record. That's an
25 improper question.

1 MS. GORMAN: Your Honor, I'm not entirely sure
2 what rule this violates. We are allowed to ask him about
3 any piece -- or examine Mr. --

4 THE COURT: Well, let me cut to the --

5 MS. GORMAN: Mr. Kurup has now denied --

6 THE COURT: Let me cut to the chase. I'll allow
7 the questioning.

8 I'm going to admit the exhibit for purpose of
9 the hearing at this time subject to a motion challenging it
10 from the government that can be presented at the conclusion
11 of this hearing in the event the government is not
12 successful relative to this particular hearing. But I want
13 to move this along. I think this is admissible under the
14 records exception.

15 I don't know if there's a discovery violation or
16 not. I haven't considered that. But I can consider that
17 at a later time. So I'll allow you to go forward with your
18 examination. And you may do that.

19 MS. GORMAN: Thank you, Your Honor.

20 THE COURT: Exhibit 126, 127, 128, and 125 are
21 admitted, subject to the objection of the government and
22 later points and authorities that they may be entitled to
23 submit in the event that they deem it would be needed in
24 this case.

25

1 (Defendant's Exhibits 125, 126, 127, 128
2 conditionally received into evidence.)

3 MS. GORMAN: Thank you, Your Honor.

4 BY MS. RACHOW:

5 Q. So, Detective Kurup, again, you testified that there
6 was no phone ringing at the time that you were with
7 Mr. Estes; is that right?

8 A. That's correct.

9 Q. Okay. So I'm going to just direct you, then, to the
10 next line down.

11 Can you tell me who the called number is -- what
12 the called number was?

13 A. The which -- I apologize. Which --

14 Q. 6781.

15 A. 6781. Called number -- oh, called number is
16 702-272-8072.

17 Q. Is that the same number that you have written down
18 as Mr. Estes' phone number?

19 A. That's correct.

20 Q. Can you tell me the date that call was made to
21 Mr. Estes' phone?

22 A. 12/4/2014.

23 Q. Okay. And can you tell me the time?

24 A. 11:45.

25 Q. Okay. And would you have been with Mr. Estes at

1 that time?

2 A. Possibly.

3 Q. Okay. I'm just going to direct you to the next line
4 down, 6782. Can you tell me who the called number was?

5 And it's okay if it's the same number. And if
6 it's Mr. Estes, please --

7 A. Oh, called number --

8 Q. -- feel free just to say --

9 A. -- is the --

10 Q. -- Mr. Estes.

11 A. It's the same number, yes.

12 Q. Okay. So it's Mr. Estes' --

13 A. Mr. Estes' number --

14 Q. Okay.

15 A. The called number.

16 Q. Okay. And can you tell me, is the date the same?

17 A. Yes.

18 Q. And what time was that call made to Mr. Estes'
19 phone?

20 A. A few seconds after the prior one you just asked me,
21 11:45:27.

22 Q. Okay. And then just looking at the times just to
23 save everybody -- and then everybody has these records.
24 What's the next time that a call was made to this number?

25 A. 11:45:31.

1 Q. And what about the next time?

2 A. 11:46:54.

3 Q. And what about the next time?

4 A. 11:47:07.

5 Q. What about the next time a call was made to that
6 number?

7 A. 11:51:23.

8 Q. And what about the next time?

9 A. 11:53:51.

10 Q. Okay. And I'm going to direct you to line 6788,
11 which is the next one down. Can you tell me what the
12 calling number was?

13 A. The calling number?

14 Q. Yes.

15 A. 415-368-9164.

16 Q. Okay. And then going to the time, can you tell me
17 the time of that call?

18 A. 11:56:41.

19 Q. Okay. And then the next line down?

20 A. It's the -- just the time?

21 Q. Yeah.

22 A. 12:05. 12:00 o'clock and 5 seconds.

23 Q. And were you with Mr. Estes at this time?

24 A. Possibly.

25 Q. Possibly. Okay. Can you tell me the next line down

1 what time that call was made?

2 A. 12:01:42.

3 Q. And what about after that?

4 A. 12:02:04.

5 Q. Okay. So is it still your testimony that Mr. Estes
6 was not on the phone when you approached him?

7 A. Yes.

8 Q. Okay. All right.

9 So, Your Honor, I'll move forward for now.

10 So Mr. Estes, he provided you his ticket and
11 identification on your request; is that right?

12 A. That's correct.

13 Q. Okay. I would point you to or direct you to
14 Exhibits 103 and 104.

15 Did you have a chance to look at those exhibits?

16 A. Yes.

17 Q. 103 and 104.

18 A. Yes.

19 Q. So those are Mr. Estes' ticket and ID; is that
20 right?

21 A. That's correct.

22 Q. Okay. So now his ticket showed you he was
23 travelling from Little Rock, Arkansas; is that right?

24 A. That's correct.

25 Q. Okay. And he had an Arkansas ID?

1 A. That's correct.

2 Q. Okay. And did you have any indication that ID was
3 not valid?

4 A. No, ma'am.

5 Q. Okay. And it showed he lived at an address in
6 Arkansas; is that right?

7 A. I believe so.

8 Q. And his -- you can take a moment.

9 A. It's just it's blacked out. That's all.

10 Q. Okay.

11 A. But, yes, it's an Arkansas ID; so I'm assuming, yes,
12 he lived in Arkansas.

13 Q. Okay. And the name on the ID matches the name on
14 Mr. Estes' ticket; is that right?

15 A. His name is -- his first name is spelled differently
16 on the ticket.

17 Q. On the ticket. Is the last name the same?

18 A. Yes.

19 Q. Okay. So -- okay. Would living in Arkansas explain
20 why Mr. Estes was coming from Arkansas?

21 A. Yes.

22 Q. Okay. So you didn't ask him why he was travelling
23 into California, did you?

24 A. No, not at the time.

25 Q. Okay. Not at the time?

1 A. No, I did not ask him if he -- why he was travelling
2 to California.

3 Q. Okay. And you didn't ask him who he was planning to
4 meet in California?

5 A. No.

6 Q. Okay. Did you ask him about the person who bought
7 his ticket?

8 A. No.

9 Q. Okay. Now, those answers might have provided
10 information that was relevant to these indicators we've
11 discussed; is that right?

12 A. Yes.

13 Q. Okay. Now, you testified on direct examination you
14 never kept Mr. Estes' ticket and ID?

15 A. Yes.

16 Q. Okay. And you completed a police report in
17 connection with this investigation; right?

18 A. Yes.

19 Q. Okay. And this investigation was done December 4th,
20 2014?

21 A. Yes.

22 Q. Okay. And that was about a year and a half ago?

23 A. Yes.

24 Q. Okay. So since then you've been involved in other
25 investigations?

1 A. Yes.

2 Q. Okay. Would it be fair to say hundreds?

3 A. Yes.

4 Q. Okay. And you write these reports when events are
5 still fresh in your mind?

6 A. Yes.

7 Q. And you make sure that those police reports are
8 thorough?

9 A. Yes.

10 Q. And complete?

11 A. Yes.

12 Q. And accurate?

13 A. Yes.

14 Q. And you know that prosecutors rely on your police
15 reports to decide whether to charge a crime?

16 A. Yes.

17 Q. Or what crime to charge?

18 A. Yes.

19 Q. And whether your actions were constitutional?

20 A. Yes.

21 Q. Okay. So -- and this report is complete, is it not?

22 A. Yes.

23 Q. Okay. And it's accurate?

24 A. Yes.

25 Q. Okay. Now, can you show me where in your police

1 report you write that you returned the ticket and ID to
2 Mr. Estes?

3 A. Do you know what exhibit that is?

4 Q. Yes. Sorry. 102.

5 A. Thanks. I did not put that in my report.

6 Q. Okay. So it's not included in your report?

7 A. No.

8 Q. All right. Now, Detective Kurup, his ID and ticket
9 were actually collected as evidence; is that right?

10 A. That's correct.

11 Q. Okay. And photographs were taken of Mr. Estes'
12 ticket and ID?

13 A. That's correct.

14 Q. Okay. Can you just tell me the circumstances, then,
15 when that ticket was taken from Mr. Estes?

16 A. When the ticket was taken from him?

17 Q. As --

18 A. As evidence?

19 Q. As evidence?

20 A. After he was arrested.

21 Q. So tell me exactly -- just walk me through it.

22 Who took that ticket and ID from Mr. Estes?

23 A. I do not recall.

24 Q. You don't recall?

25 A. No.

1 Q. Okay. So do you know when it was taken?

2 A. It was --

3 Q. Can you just pinpoint the exact moment that ticket
4 and ID was taken back as evidence then?

5 A. No. It would be after he was put into handcuffs,
6 whether it was on that train or stepping off that train
7 when we were outside of the train.

8 Q. So you don't know if it was you?

9 A. No, I do not recall.

10 Q. You don't know if it was Detective Moore?

11 A. As far as retrieving it or taking the photo of it?

12 Q. Retrieving it?

13 A. Retrieving it, no.

14 Q. Okay. And do you remember who took the photograph?

15 A. I did. I took the photograph of the ID.

16 Q. Okay. So now you were -- you were investigating
17 Mr. Estes for transporting drugs or drug money? Just to
18 back up to why you were here, or why you were with
19 Mr. Estes.

20 A. Yes.

21 Q. Or contraband?

22 A. Yes.

23 Q. Okay. And being a drug trafficker is a crime?

24 A. Yes.

25 Q. Okay. And it's a serious crime?

1 A. Yes, ma'am.

2 Q. Okay. And you told Mr. Estes that you were
3 investigating him for being a drug trafficker?

4 A. Excuse me?

5 Q. You told Mr. Estes that you were investigating him
6 specifically for that, for being a drug trafficker; right?

7 A. Yes.

8 Q. Okay. And you asked him whether he had drugs or
9 drug money?

10 A. Yes.

11 Q. Okay. Now, you didn't tell him that he was free to
12 leave, did you?

13 A. No, I did not.

14 Q. Okay. You didn't tell him he was free to end the
15 encounter?

16 A. No, I did not.

17 Q. Okay. And you didn't tell him he wasn't obligated
18 to answer that question?

19 A. That he wasn't obligated to answer --

20 Q. That he -- yes. You did not tell him that, did you?

21 A. No.

22 Q. Okay. Now, in response to your question, he clearly
23 told you that he was not in possession of illegal
24 contraband or money made from the sale of illegal
25 contraband; is that right?

1 A. That's right.

2 Q. Okay. Now, when Mr. Estes told you he wasn't
3 carrying drugs or drug money, he didn't act nervous, did
4 he?

5 A. No.

6 Q. Okay. He didn't equivocate?

7 A. No.

8 Q. Okay. And it's your testimony that his phone was
9 not constantly ringing when you were talking to him about
10 all this?

11 A. That's correct.

12 Q. Okay. Now -- let's see. So after Mr. Estes told
13 you he wasn't trafficking drugs or drug money, though, you
14 didn't end the encounter, did you?

15 A. No.

16 Q. Okay. And you didn't offer him a refund?

17 A. No.

18 Q. Okay. And you didn't walk away?

19 A. No.

20 Q. Okay. So after he told you he wasn't trafficking
21 drugs, you just asked him for consent to search through his
22 room and luggage?

23 A. That's correct.

24 Q. Okay. But Mr. Estes did not consent; is that right?

25 A. That's correct.

1 Q. Okay. And so -- and he told you, "No, you cannot
2 search my room and luggage"; is that correct?

3 A. Yes.

4 Q. Okay. And he has that right, doesn't he?

5 A. Yes.

6 Q. And he has that right under the Constitution?

7 A. Yes.

8 Q. Okay. Under the Fourth Amendment.

9 And he clearly asserted that right to you?

10 A. Yes.

11 Q. Okay. And, now, at this point you didn't tell him
12 he had a right to a refund, did you?

13 A. No.

14 Q. Okay. And you didn't have the -- you didn't tell
15 him he had the right to a refund and then to leave the
16 train with his stuff?

17 A. No.

18 Q. Okay. So when somebody asserts a right, is it your
19 practice to ask them again to waive that right?

20 A. Is it my practice to ask them to waive the right
21 to --

22 Q. If somebody asserts a right, a constitutional right,
23 is it your general practice to ask them again to waive it,
24 after they've already said, "I assert this right"?

25 A. Right afterwards, no.

1 Q. Right afterwards, no.

2 A. No.

3 Q. But you do ask them again? You just wait some time?

4 I'm just trying to understand your --

5 A. It depends --

6 Q. -- response.

7 A. -- on the circumstances, ma'am.

8 Q. So sometimes it is your practice when somebody

9 asserts the right to ask them again to waive it?

10 A. Yes.

11 Q. Okay. Now, after -- so after Mr. Estes refused
12 consent, it's still your testimony that he believed he was
13 free to end this encounter?

14 A. Yes.

15 Q. Okay. So Mr. Estes could, if he wanted to, take out
16 his phone and make a phone call?

17 A. Yes, absolutely.

18 Q. And he could just move past you, go to his room, and
19 close the door?

20 A. Yes.

21 Q. Okay. But that's not what happened, is it?

22 A. I advised Mr. Estes that we were calling a police
23 canine in to do a scan.

24 Q. Okay. That's -- we'll get there. Just answer my
25 question, please.

1 So after refusing consent, you didn't just let
2 him go about his business then?

3 A. By --

4 Q. So I'll just back up. You advised him, after he
5 refused consent, you were going to get a police dog?

6 A. Yes.

7 Q. Okay. And you also told him if the canine alerted
8 on his room, all of the items are going to be seized, and
9 you would get a search warrant?

10 A. Yes.

11 Q. Okay. And then you contacted Officer Hill?

12 A. Yes.

13 Q. Okay. And Officer Hill and his canine were already
14 at Amtrak?

15 A. Yes.

16 Q. Okay. And Officer Hill had initiated the call to
17 dispatch actually -- were you aware that Officer Hill
18 himself had initiated a call to dispatch about 40 minutes
19 before this?

20 A. No.

21 Q. Okay. So then you all board the train with
22 Mr. Estes; is that right?

23 A. Officer Hill went -- he was up in the hallway first.

24 Q. Okay. So I'll just ask you to slow down and then
25 walk me through it.

1 A. Okay.

2 Q. So you -- so who boards the train then?

3 A. We all board the train.

4 Q. Who is "we all"?

5 A. I'm sorry. Officer Hill, myself, Detective Moore,
6 and Mr. Estes.

7 Q. Okay. So it's the three officers, the dog, and
8 Mr. Estes?

9 A. Yeah.

10 Q. Okay. Now, okay. So can you tell me where exactly
11 you were then on the train? Right --

12 A. Yes.

13 Q. -- when you get on?

14 A. Right when I get on?

15 Q. Uh-huh.

16 A. We were in the bottom level of the train, the entry
17 level of it.

18 Q. Okay. So then where did you go?

19 A. Then we went upstairs. There's a staircase that
20 leads to the upstairs level.

21 Q. So where was Mr. Estes between these three officers?
22 Can you position him for me between you guys?

23 A. I do not remember. I know he wasn't in front of us.

24 Q. Okay.

25 A. So possibly behind us.

1 Q. Okay. So possibly behind. So you don't actually
2 remember?

3 A. I know he wasn't in front of us. Behind us. So he
4 would be towards the entrance of where we came in. And we
5 would be closer to the staircase going up to the top level.

6 Q. Okay. Now, could you just describe the hallway of
7 the Amtrak station then that you're talking about?

8 A. Of the station?

9 Q. Uh-huh. Or not of the station. Of the train now
10 itself.

11 A. Oh, there's about --

12 Q. How big is it?

13 A. Widthwise, I would say about a -- about, say, a few
14 feet widthwise.

15 Q. A few, like two, ten? I mean --

16 A. No, about three, three or four feet.

17 Q. Three or four feet?

18 A. Yeah.

19 Q. Okay. So --

20 A. Lengthwise, I couldn't tell you. Over 10, 15
21 feet -- I mean, it's a pretty long hallway.

22 Q. Okay. So during this time when you're going up the
23 stairs, you didn't receive -- or Mr. Estes didn't -- his
24 phone wasn't ringing?

25 A. Not to my knowledge, no.

1 Q. And he didn't -- and so no officer, to your
2 knowledge, then, picked up his phone?

3 A. No.

4 Q. And no officer spoke to a woman?

5 A. No.

6 Q. Okay. So now, at this point, then, Officer Hill is
7 deploying his canine along the hallway?

8 A. After we come upstairs?

9 Q. After you come upstairs?

10 A. No. We -- we asked Mr. Estes -- Mr. Estes' room was
11 open. The door was open. And we asked him before if he'd
12 prefer -- before we did the scan of the hallway, "Do you
13 prefer to have your door closed or door open?" He said he
14 wanted it closed; so we closed it.

15 Q. Mr. Estes -- when you first contacted him, he was on
16 the train platform; is that right?

17 A. Yes.

18 Q. Okay. So your testimony is that his -- that he left
19 his sleeper car door just open?

20 A. I believe so. When we came up there, it was open.

21 Q. Okay. And you have a clear recollection that he
22 left that sleeper car room open?

23 A. That he left it open? No. It was just open.

24 Q. Okay.

25 A. I don't --

1 Q. So you don't actually know who opened it?

2 A. No, I do not.

3 Q. And actually those doors don't lock from the
4 outside, do they?

5 A. No, they do not.

6 Q. Okay. So we don't know who left that door open?

7 A. No, ma'am.

8 Q. Okay.

9 So just Court's indulgence.

10 Okay. So then at this point -- so Officer Hill
11 then -- so before Officer Hill deploys his canine, what
12 happens?

13 A. The door is closed. And then we make sure the
14 hallway is cleared so that nobody gets startled by the dog
15 or anything like that. We make sure there's nobody in the
16 way so the dog could do a scan of the hallway.

17 Q. Okay. So you cleared out the hallway of other
18 people?

19 A. There was nobody -- there was nobody there to begin
20 with. But that's -- we just make sure that it's not going
21 to be blocked off or distracted or anything like that. But
22 there was nobody in the hallway.

23 Q. So then Mr. Estes is then just alone with you and
24 the other two officers?

25 A. As far as I can recall, yes, in that hallway.

1 Q. Okay.

2 A. Along that opening by the staircase, yes.

3 Q. Okay. And Officer Hill, to be clear, he's in
4 uniform; right?

5 A. That's correct.

6 Q. Okay. But all three of you are armed?

7 A. Yes.

8 Q. Okay. So then Officer -- then Officer Hill deploys
9 his canine in the hallway.

10 And then do you -- so Detective Moore then tells
11 Mr. Estes that the canine showed interest in his room?

12 A. That's correct.

13 Q. Okay. Now, Detective Moore didn't, to the best of
14 your recollection, Mirandize Mr. Estes before telling him
15 that the police canine showed interest in his room, did he?

16 A. To the best of my knowledge, no.

17 Q. Okay. And you didn't Mirandize Mr. Estes?

18 A. No.

19 Q. Okay. Now, minutes before Detective Moore then told
20 Estes that the dog showed interest in his sleeper car, you
21 had told Mr. Estes that if the dog alerted you would seize
22 all of his belongings and get a warrant; right?

23 A. Yes.

24 Q. And that was just minutes before?

25 A. Yes.

1 Q. Okay. Now, Officer, you're aware there's a legal
2 difference between interest and alert; is that right?

3 A. Yes.

4 Q. Okay. And you learned that as part of your training
5 and experience as a police officer?

6 A. Yes.

7 Q. Okay. So did anybody explain that to Mr. Estes?

8 A. I did not.

9 Q. So you have no -- so you did not explain the legal
10 difference between interest and alert to Mr. Estes?

11 A. No.

12 Q. Okay. And he had just been advised that if a dog
13 alerted you would get a warrant?

14 A. If a dog alerted, yes.

15 Q. Okay. So it's your testimony that after Detective
16 Moore confronts Mr. Estes about the dog's interest in his
17 room, he advises he has a little piece of personal-use
18 marijuana?

19 A. That's correct.

20 Q. Okay. So then at this point you ask Mr. Estes,
21 again, to consent to search?

22 A. If I may search his room.

23 Q. Which is, again, you asked him again for consent to
24 search his room?

25 A. Yes.

1 Q. Now, to be very clear, you asked Mr. Estes for
2 consent after Detective Moore told Mr. Estes that the dog
3 had showed interest in his sleeper car?

4 A. Yes. And also after Mr. Estes' statement, yes.

5 Q. So after?

6 A. After Detective Moore state -- yes.

7 Q. Okay. And you know that Estes had inserted his
8 right not to consent to a search before Detective Moore
9 told him about the canine's interest --

10 A. That --

11 Q. -- isn't that correct?

12 A. That's correct.

13 Q. Okay. Now, you want your searches to be
14 constitutional; right?

15 A. Yes, ma'am.

16 Q. Okay. And you know that a prosecutor may one day be
17 in a courtroom just like this and have to prove that
18 consent is freely and voluntarily given?

19 A. That's correct.

20 Q. Okay. And has to be completely voluntary?

21 A. Yes, ma'am.

22 Q. Okay. And it can't be the product of threats?

23 A. Yes, ma'am.

24 Q. Or coercion?

25 A. Yes, ma'am.

1 Q. Okay. And Mr. Estes had already told you once he
2 didn't want you to conduct a search?

3 A. That's correct.

4 Q. Okay. So now you work for Amtrak?

5 A. Yes, ma'am.

6 Q. Okay. And you work with the Reno Police Department?

7 A. Yes.

8 Q. And you're familiar with permission to search forms,
9 aren't you?

10 A. Yes.

11 Q. Okay. Does Amtrak have their own version too?

12 A. Not to my knowledge, no.

13 Q. Okay. But you're familiar with permission to search
14 forms?

15 A. Yes.

16 Q. Can you tell me what those are?

17 A. I believe it's a written form that you fill out
18 giving -- saying that you gave permission for law
19 enforcement personnel to search your items.

20 Q. Okay. Now, I'm going to show you what's been marked
21 as Exhibit 112.

22 Are you familiar with that form?

23 A. No, ma'am.

24 Q. Okay. But you are familiar generally with
25 permission to search forms?

1 A. Yes.

2 Q. Okay. And you elected not to use a permission to
3 search form; is that right?

4 A. That's correct.

5 Q. Okay. And you chose not to have Mr. Estes
6 memorialize his consent in writing in any way?

7 A. We did not -- we do not have this form with us
8 generally.

9 Q. I'm just going to ask you that question again.
10 You chose not to have Mr. Estes memorialize his
11 consent in writing at all?

12 A. That's correct.

13 Q. Okay. And so -- and if you had, that would be
14 something other than a police officer's word that could
15 prove that Mr. Estes ever consented?

16 A. That's correct.

17 Q. Okay. And now do you have an audio recording
18 device?

19 A. I do not.

20 Q. Okay. You do not.

21 Now, you were involved in a forfeiture case in
22 this courtroom; is that right?

23 A. Which case is that?

24 Q. A forfeiture case? US versus \$40,000?

25 MS. RACHOW: Objection, relevance.

1 MS. GORMAN: Your Honor, as this Court knows,
2 this Court ruled against Amtrak in a consent case months
3 before this search happened. I think it's important to
4 know whether they elected to change their policy or not.

5 Part of this Court's ruling in that case said
6 that Amtrak wasn't -- didn't actually -- like they chose
7 not to memorialize consent. And that was part of this
8 Court's ruling in that case. And Detective Kurup was
9 involved -- was an officer in that case.

10 THE COURT: I'll allow you to ask him those
11 questions to that extent. I don't want to get into the
12 other case in any way.

13 MS. GORMAN: Understandable, Your Honor.

14 BY MS. GORMAN:

15 Q. So you don't recall that you were ever involved in a
16 forfeiture case in this courtroom?

17 A. Yes, I have been.

18 Q. Okay. And do you -- did you know that in that
19 case -- were you aware in that case that the Court found
20 that the government couldn't prove consent?

21 A. Later on, yes.

22 Q. Okay. So you were made --

23 A. Yes --

24 Q. -- aware of that?

25 A. -- I was made aware.

1 Q. Were you aware one of the things that the Court
2 noted was that Amtrak detectives had just -- had not
3 memorialized consent at all?

4 A. I was not.

5 Q. Okay.

6 And I'll move on from that issue, Your Honor.

7 Okay. So, now, you've testified that just
8 before your search you directed Mr. Estes to retrieve his
9 personal-use marijuana out of a bag?

10 A. No.

11 Q. Out of his bag? No, you didn't?

12 A. No.

13 Q. So it's your -- okay. So it's your testimony that
14 Mr. Estes just walked and reached his hand into a bag in
15 his room?

16 A. After he retrieved the bag from the top bunk and put
17 it on the bottom one --

18 Q. Okay. And that --

19 A. -- he retrieved the jewelry box with the marijuana
20 in it.

21 Q. And that was not at your direction?

22 A. No.

23 Q. Now, this is a guy that you think might be a drug
24 trafficker? So this is a guy, at this point, that you
25 think might be a drug trafficker?

1 A. Possibly.

2 Q. Okay. And you've already asked him about weapons?

3 A. Yes.

4 Q. Okay. And part of your job is to keep yourself
5 safe; is that right?

6 A. Yes.

7 Q. And to keep your cover officer safe?

8 A. Yes.

9 Q. And your canine officer?

10 A. Yes.

11 Q. Okay. And so your testimony is that you let this
12 suspected drug trafficker go into his bag that later
13 contained a gun and take marijuana out?

14 A. Yes. When he -- when he went in to retrieve the bag
15 and put it down, this whole time his demeanor was fine, as
16 far as, you know, normal tone and everything, wasn't being
17 aggressive, or anything like that. And he was still free
18 to move about. He moved about to the room. And --

19 Q. And this is, pardon me, after you had asked his
20 consent to search his bag?

21 A. Yes.

22 Q. Okay. So then you performed this search after this;
23 right?

24 A. Yes.

25 Q. Okay. And then you find a firearm?

1 A. Yes.

2 Q. Okay. So now you don't immediately Mirandize
3 Mr. Estes after you find the firearm; right?

4 A. No, ma'am.

5 Q. Okay. And actually are you aware -- so Detective
6 Moore affirmatively represents that no state law has been
7 broken?

8 A. At this time, no.

9 Q. Okay. But that was not true, was it?

10 A. As far as the weapon?

11 Q. Well, so you found marijuana; right?

12 A. Yes.

13 Q. Okay. Now, that is against state law --

14 A. It is --

15 Q. -- is it not?

16 A. -- but the -- but using officer discretion, we
17 wanted to see --

18 Q. So I'm just going to ask you to answer my questions.
19 And I know it's --

20 A. Oh, technical --

21 Q. -- hard in court.

22 A. Oh, sorry.

23 Q. But so it was not true that no state law had been
24 broken?

25 A. No.

1 Q. Okay. So but that is what Detective Moore told
2 Mr. Estes?

3 A. Yes.

4 Q. Okay. So having told Mr. Estes that no state law
5 had been broken, then Detective Moore asked Mr. Estes if he
6 could speak to him downstairs?

7 A. Yes.

8 Q. Okay. And then all of Mr. Estes' belongings are
9 removed from his room?

10 A. Yes.

11 Q. Okay. So who packs up his belongings?

12 A. I did.

13 Q. Okay. And who carries them?

14 A. I did.

15 Q. Okay. So where is Mr. Estes?

16 A. Mr. Estes is walking down to the lower level where
17 we originally were with Detective Moore.

18 Q. Okay. And then you, Detective Moore, and Mr. Estes
19 are together at the entry or lower level?

20 A. Yes, ma'am.

21 Q. Okay. So and then Detective Moore calls Reno
22 dispatch?

23 A. Yes.

24 Q. Okay. And they advised that Mr. Estes had a prior
25 felony?

1 A. Yes.

2 Q. Okay. And then you place Mr. Estes in handcuffs?

3 A. Yes.

4 Q. Okay. But you don't immediately Mirandize Mr. Estes
5 at this point either?

6 A. No.

7 Q. Okay. So your testimony is that while in handcuffs,
8 but before Miranda, he then makes this unsolicited
9 statement about where he purchased the firearm; is that
10 right?

11 A. Yes.

12 Q. Okay. Well, now, while Mr. Estes is in handcuffs on
13 the train, one of you takes photographs of Mr. Estes; is
14 that right?

15 A. Yes, a picture of his face.

16 Q. Okay. Well -- and so you just took one picture of
17 his face?

18 A. No. There was other photos taken.

19 Q. Okay. I'm going to just show you -- Your Honor,
20 Defense Exhibit 116.

21 And I'm just going to ask you to look at B, I,
22 and J of those exhibits. So these are photographs that are
23 taken on the train of Mr. Estes?

24 A. Yes.

25 Q. Okay. And these were all taken before he was

1 Mirandized?

2 A. Yes.

3 Q. Okay. And they're taken while he's in handcuffs?

4 A. Yes.

5 Q. Okay. So who's taking these pictures of Mr. Estes?

6 A. I did.

7 Q. You did?

8 A. Yes.

9 Q. Okay. So you're taking close-up pictures of his
10 hands in handcuffs?

11 A. No. Of his tattoos on his forearms.

12 Q. Okay. And his face?

13 A. Yes.

14 Q. And this is all on the train?

15 A. Yes.

16 Q. Okay. And this is all before Miranda?

17 A. Yes.

18 Q. Okay. So, now, Estes is not actually Mirandized
19 until he leaves this train in Verdi; is that right?

20 A. Yes.

21 Q. Okay. And that's after the transport unit arrives?

22 A. I believe so.

23 Q. Okay. And, again -- and you never asked Mr. Estes
24 also to sign a written waiver of his Miranda rights?

25 A. No. I did not Mirandize Mr. Estes.

1 MS. GORMAN: Okay. So, Your Honor, I'm going
2 to -- first, I'm going to move for admission of those three
3 pictures.

4 MS. RACHOW: No objection.

5 THE COURT: They are admitted.

6 (Defendant's Exhibits 116B, 116I, 116J
7 received into evidence.)

8 MS. GORMAN: Thank you, Your Honor.

9 And I have no further questions for this witness
10 at this point.

11 THE COURT: All right. This is a good time for
12 a short break. Let's reconvene at 3:40.

13 And I will alert you I will need to close this
14 down at 5:00 today if we haven't finished by then.

15 MS. RACHOW: Your Honor, I don't believe it's
16 likely that we will finish by 5:00. And I don't have an
17 objection -- I know Ms. Gorman has a witness from out of
18 state that she may want to put on out of order. I don't
19 have an objection to the Court hearing that witness out of
20 order.

21 THE COURT: All right.

22 MS. GORMAN: I'll ask her. Would the Court be
23 able to continue the hearing, just so I can tell her,
24 tomorrow morning if you want to avoid that?

25 THE COURT: What's the schedule, Dionna?

1 (Discussion held off the record.)

2 THE COURT: Let's take a short break. Ten
3 minutes.

4 (Recess from 3:31 p.m. until 3:41 p.m.)

5 THE COURT: All right. Have a seat, please.
6 Redirect examination?

7 MS. RACHOW: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. RACHOW:

10 Q. Sir, I'd like to start with Defendants' Exhibit 127.
11 Do you have that in front of you?

12 A. Yes.

13 Q. Now, defense counsel went through this with calling
14 number, called number, and asked you repeatedly whether or
15 not Mr. Estes phone was ringing; is that correct?

16 A. That's correct.

17 Q. Are you familiar with cell phones?

18 A. Yes, ma'am.

19 Q. Can you put your cell phone on silent?

20 A. Yes, ma'am.

21 Q. Can you put it on vibrate?

22 A. Yes.

23 Q. And would both of those be perfectly plausible
24 explanations as to why you didn't hear the phone ring?

25 A. Yes, ma'am.

1 Q. Now, the one thing I'd like to point out, could you
2 please look over at the column on Exhibit 127 regarding the
3 phone call's duration?

4 A. Yes.

5 Q. Now, with all the calls starting at perhaps
6 11:45:25, which is 6781, how long was that call?

7 A. One minute.

8 Q. What about the next call?

9 A. One minute.

10 Q. The following call?

11 A. One minute.

12 Q. The next one?

13 A. One minute.

14 Q. The one after that?

15 A. One minute.

16 Q. The one after that?

17 A. One minute.

18 Q. The next one?

19 A. Zero.

20 Q. And the next one?

21 A. Zero.

22 Q. That one?

23 A. Zero.

24 Q. And the one after that?

25 A. 01. One second.

1 Q. And then the final one?

2 A. 20 seconds.

3 Q. Now, does this record give any indication whether or
4 not a person answered the phone?

5 A. No.

6 Q. Does it give any indication whether or not this was
7 a voicemail message?

8 MS. GORMAN: Your Honor --

9 THE WITNESS: No.

10 MS. GORMAN: -- objection, leading.

11 THE COURT: I'll allow the question but caution
12 you, Ms. Rachow, to use direct questions.

13 BY MS. RACHOW:

14 Q. And is there any information on these records that
15 would indicate when the time starts, such as when the phone
16 begins to ring?

17 A. Not that I can see, no.

18 Q. Now, I'd like to direct your attention to a report
19 which has been marked as Defense Exhibit 102.

20 Now, the format that this report is in, is this
21 an Amtrak format?

22 A. No.

23 Q. Is it a Reno Police Department format?

24 A. Yes.

25 Q. When you input your report, what do you do?

1 A. Just input a -- whoever was involved, as far as
2 officers and suspects, narratives, evidence.

3 Q. And with this, with the first three pages of your
4 report, pages 1 through 3 of 5, did you personally put in
5 that information?

6 A. I do not recall.

7 Q. And on page 4 of your report, the narrative, did you
8 input that information?

9 A. Yes.

10 Q. And with your narrative, did you give a date and
11 time?

12 A. Yes.

13 Q. And could you tell us what time that was?

14 A. Approximately 1200 hours, 12:00 noon.

15 Q. And is that based on your recollection of how this
16 event went?

17 A. Yes.

18 Q. And you did not call in to dispatch yourself?

19 A. No.

20 Q. And are you aware if other officers called in to
21 dispatch, or were you aware at the time that other officers
22 might have called into dispatch?

23 A. No. I just know that Detective Moore called
24 dispatch in reference to Mr. Estes, but that's it.

25 Q. But you don't know when that was?

1 A. No.

2 Q. Now, when you were asked about whether or not it was
3 in your report that you returned Mr. Estes' driver's
4 license and his ticket -- do you remember that question?

5 A. Yes.

6 Q. And it was not in your report?

7 A. No.

8 Q. Are you confident that you returned those items to
9 him?

10 A. Yes.

11 Q. And why are you confident that you returned those
12 items to him?

13 A. It's what we do every single time.

14 Q. And if I could direct your attention to Government's
15 Exhibit 1.

16 A. Yes.

17 Q. Are you familiar with Government's Exhibit 1?

18 A. Yes.

19 Q. How are you familiar with Government's Exhibit 1?

20 A. It's Mr. Estes' ticket.

21 Q. Did you take this photo?

22 A. I do not know.

23 Q. Did somebody take this photo?

24 A. Yes.

25 Q. Involved in this investigation?

1 A. Yes.

2 Q. Do you know whose hand is in this photo?

3 A. No.

4 Q. Is this a true and accurate copy of the ticket that
5 Mr. Estes gave you?

6 A. Yes.

7 Q. And did you take this photograph, or did somebody --
8 I'm sorry. I'm going to strike that.

9 When you initially made contact with Mr. Estes
10 and you asked him for his identification and his ticket,
11 did you take a photograph then?

12 A. No.

13 Q. When were the items photographed?

14 A. After Mr. Estes was arrested.

15 Q. And is there anything about this picture that leads
16 you to know that this picture was taken after Mr. Estes was
17 arrested?

18 A. No.

19 Q. When you were dealing with Mr. Estes, were you
20 wearing gloves?

21 A. No.

22 Q. Was Detective Moore wearing gloves?

23 A. No.

24 Q. Is the person holding the ticket wearing gloves?

25 A. Yes.

1 Q. And when are gloves typically put on?

2 A. For a search of the person after arrest.

3 Q. Now, when you explained to Mr. Estes that the next
4 step was going to be that the canine was going to be
5 deployed in the hallway, was the canine deployed in the
6 entire hallway?

7 A. Yes.

8 Q. Not just on Mr. Estes' room?

9 A. No.

10 Q. And Mr. Estes, did he want to be -- to watch, to
11 observe?

12 MS. GORMAN: Whoa, Your Honor, it calls for
13 speculation.

14 THE COURT: Sustained.

15 BY MS. RACHOW:

16 Q. Did Mr. Estes say anything to you about wanting to
17 watch the dog?

18 A. Yes.

19 Q. And what did Mr. Estes say to you?

20 A. He asked to watch the scan.

21 Q. The scan?

22 A. The dog being deployed in the hallway.

23 Q. Now, on cross you testified that when you, the three
24 of you, went into the car and upstairs that you weren't
25 sure where Mr. Estes was?

1 A. That's correct.

2 Q. But you know for sure he was not in front of you?

3 A. That's correct.

4 Q. At any point when you were upstairs with Mr. Estes,
5 did you block the stairway that would have let Mr. Estes to
6 be able to leave?

7 MS. GORMAN: Your Honor, objection, leading.

8 THE COURT: I'll allow the question.

9 BY MS. RACHOW:

10 Q. Sir, when you were upstairs with Mr. Estes, in any
11 way did you block the staircase?

12 A. No.

13 Q. Did you see anyone else block the staircase?

14 A. No.

15 Q. If Mr. Estes had chosen to leave, would you have
16 stopped him?

17 A. No.

18 Q. Now, you testified also during cross that sometimes
19 you will ask consent to search a second time?

20 A. Yes.

21 Q. And can you explain circumstances when that would
22 happen?

23 A. As if -- after he advised that he had personal-use
24 marijuana in the room, that would be one reason why. When
25 circumstances change, I ask again.

1 Q. So when circumstances change?

2 A. Yes.

3 Q. And in this case, did you feel circumstances had
4 changed?

5 A. Yes.

6 Q. And what led you to ask Mr. Estes if you could
7 search his bag a second time?

8 A. Because he advised us that he had personal-use
9 marijuana.

10 Q. Did you tell him that he had to give you consent to
11 search his room?

12 A. No.

13 Q. Did you order him?

14 A. No.

15 Q. Did you threaten him?

16 A. No.

17 Q. During this entire contact with Mr. Estes, from the
18 beginning to the point where you go downstairs, after the
19 firearm is found, can you give us an estimate of how long
20 that took?

21 A. Maybe 10 minutes.

22 Q. During this entire perhaps 10 minutes, did
23 Mr. Estes' demeanor change at any point?

24 A. No.

25 Q. Would you describe him as cooperative?

1 A. Yes.

2 Q. Is it fair to say that when you ask people
3 questions, that they have lied to you before?

4 A. Yes.

5 Q. Is that common?

6 A. Yes.

7 MS. RACHOW: I don't have anything further.

8 THE COURT: Recross?

9 MS. GORMAN: Thank you, Your Honor.

10 RE CROSS-EXAMINATION

11 BY MS. GORMAN:

12 Q. So, Officer, you testified that you have a cell
13 phone?

14 A. That I have a cell phone?

15 Q. Yes.

16 A. Yes.

17 Q. Okay. Can you tell me what kind of cell phone it
18 is?

19 A. It's a Samsung Galaxy Note 3.

20 Q. Okay. Does your Samsung Galaxy Note 3 -- can it
21 record? Can it do an audio record?

22 A. Yes.

23 Q. Okay. So you have the -- and did you have your
24 Samsung Galaxy 3 with you?

25 A. Yes.

1 Q. Okay. And you -- did you choose at any point to
2 record any of this interaction?

3 A. No.

4 Q. Okay. Now, you -- the prosecutor asked you about
5 the time of this encounter on your police report.

6 Now, you had previously testified that the --
7 when you wrote 12:00 on your police report, you could be
8 off by as much as 15 minutes; is that right?

9 A. Yes.

10 Q. Okay. And you had also said that you were not
11 surprised, is that correct, that Detective Moore had
12 written 11:40 as the time of the interaction on his
13 probable cause affidavit?

14 A. Yes.

15 Q. Okay. Now, you're -- obviously you're not familiar
16 with how T-Mobile keeps phone records, are you?

17 A. No.

18 Q. Okay. And you don't know how the minutes work if a
19 call goes to voicemail, whether somebody gets -- how they
20 count that in terms of minutes?

21 A. No, ma'am.

22 Q. Okay. But I'll specifically -- looking at Exhibit
23 127, I just want you to look at that. The call on line
24 6780.

25 A. Okay.

1 Q. So I just want to be really clear. Can you tell me
2 the time of that call?

3 A. 11:43:10.

4 Q. Okay. And you testified before it's at least
5 possible you were with Mr. Estes at that time; is that
6 right?

7 A. Yes, possibly, yes.

8 Q. And who made that call? What number was the calling
9 number?

10 A. 702-272-8072.

11 Q. And is that Mr. Estes' number, according to your
12 police report?

13 A. Yes.

14 Q. Okay. Now, you just testified that you -- the
15 reason you recall that you didn't keep Mr. Estes' ticket is
16 because you do it every single time, you give it back every
17 single time?

18 A. Yes.

19 Q. Okay. So you also testified, however, on
20 cross-examination that you don't remember who actually took
21 Mr. Estes' ticket when it was actually taken as evidence;
22 is that right?

23 A. That's correct.

24 Q. So you don't actually have a clear recollection of
25 that?

1 A. That's correct.

2 Q. So do you have an actual -- I understand that you
3 say that you return tickets all the time. But do you have
4 then a clear, specific recollection in this time of
5 physically turning over Mr. Estes' ticket back to him?

6 A. I would say right when I talked to him, after I
7 verify it's him, I hand it back.

8 Q. And you know that because you always do it?

9 A. Yes.

10 Q. But you don't know, have, like, crystal clear
11 recollection of this specific --

12 A. Crystal clear --

13 Q. -- incident?

14 A. -- recollection, no.

15 Q. Okay. Now, you also testified that Mr. Estes had
16 expressed that he wanted to watch the dog --

17 A. Yes.

18 Q. -- is that right?

19 Okay. Can you just -- I'm just going to direct
20 you to your police report, 102. Can you tell me where
21 Mr. Estes says that?

22 A. I did not put in it my report.

23 Q. And you previously testified that your reports are
24 complete; is that right?

25 A. To my knowledge, yes.

1 Q. And that they're accurate?

2 A. Yes.

3 Q. And it's been about a year and a half?

4 A. Yes.

5 Q. So you also -- the prosecutor just asked you about
6 where you were positioned on the staircase. Now, would you
7 describe that staircase as narrow?

8 A. Yes.

9 Q. Okay. And when Mr. Estes and the three officers
10 were getting on that train, was the train moving at any
11 point?

12 A. No.

13 Q. The train was still the entire time you were with
14 Mr. Estes on the train?

15 A. When we got on the train?

16 Q. I'm talking about the whole time you're on the train
17 with Mr. Estes, was the train moving?

18 A. The entire time, no. The train was not moving the
19 entire time.

20 Q. Was it moving some of the time?

21 A. Yes.

22 Q. Okay. And when you were with Mr. Estes, there is a
23 dog that's walking in the hallway in front of his room; is
24 that right?

25 A. Yes.

1 Q. And that room contained Mr. Estes' belongings;
2 right?

3 A. Yes.

4 Q. Okay. Now, the prosecutor asked you about your
5 practice of asking people who waive rights again to waive
6 them.

7 A. Yes.

8 Q. Do you recall that?

9 A. Yes.

10 Q. Okay. And you testified that it's when
11 circumstances change.

12 A. Yes.

13 Q. Okay. So, now, I want to be really clear. Was
14 Mr. Estes ambiguous when he told you that first time he
15 does not want you to search his things?

16 A. He advised that he did not. He said no.

17 Q. So was there anything ambiguous about that?

18 A. No.

19 Q. Okay. Now, you said that the circumstance had
20 changed when Mr. Estes told you he had some personal-use
21 marijuana?

22 A. Yes.

23 Q. Okay. Now, your testimony is that Mr. Estes said
24 the personal-use marijuana after Detective Moore told him
25 that the dog was showing a lot of interest in his sleeper

1 car; is that right?

2 A. Yes.

3 Q. And minutes before Detective Moore told that to
4 Mr. Estes, you had told Mr. Estes that if a dog alerted you
5 would get a warrant and seize his things?

6 A. Yes, if the dog alerted, yes.

7 Q. Okay. And that was the context that Mr. Estes then
8 said he had some personal-use marijuana? That was what
9 happened before --

10 A. That's what happened --

11 Q. --is that right?

12 A. -- before. I don't know why he told us yes.

13 Q. Okay. I understand you -- well, but that happened
14 right before Mr. Estes told you about the marijuana?

15 A. That -- yes.

16 Q. Okay. And just to be clear, you didn't Mirandize
17 him?

18 A. No.

19 Q. Didn't tell him he was free to leave?

20 A. No.

21 Q. Didn't tell him he was free to end this encounter?

22 A. No.

23 Q. Okay.

24 MS. GORMAN: Your Honor, I have no further
25 questions.

1 THE COURT: Any redirect, Ms. Rachow?

2 MS. RACHOW: No, Your Honor.

3 THE COURT: All right. You may step down,
4 Detective Kurup. Thank you.

5 THE WITNESS: Thank you, sir.

6 MS. RACHOW: Your Honor --

7 THE COURT: Government's next witness.

8 MS. RACHOW: Yes, Your Honor. The government
9 calls Detective Moore.

10 Your Honor, if I could just ask on Defense
11 Exhibits 127 and 128, we don't have a list of what all the
12 codes are. And if you look at the transaction type on page
13 2 of page 1, several of these incomings could be text
14 messages. And we can't tell possibly what these things are
15 because we don't have the code --

16 MS. GORMAN: Your Honor, we do have the --

17 MS. RACHOW: -- of what the transactions are.

18 MS. GORMAN: Sorry. Your Honor, we do have
19 actually the codes. And we talked to T-Mobile. They said
20 there were, like, no text messages at all. We have the
21 code. I didn't think it was particularly helpful. But I
22 have it. And I can provide it to everybody.

23 THE COURT: All right. If you would do that,
24 please.

25 MS. GORMAN: Thank you.

1 THE COURT: And, Ms. Rachow, when you're
2 referring to the code, are you referring to what part of
3 the exhibit?

4 MS. RACHOW: If you look on the page 2, it has
5 transaction types. Usually when you get phone records, you
6 get a key from the phone company which will let you
7 distinguish what -- if it's an incoming text message, if
8 it's an outgoing text message, if it's a text, if it's some
9 other -- if there's -- you know, if it's a phone call.
10 There are more -- there are keys to these.

11 THE COURT: All right.

12 MS. GORMAN: And, Your Honor, we have it. And
13 we can seek to introduce it. I think it's pretty apparent
14 that it's -- because of the way the seconds work, that it's
15 not texts. But we can do it on another --

16 THE COURT: Let's supplement the exhibit because
17 that's a reasonable clarification.

18 All right. So that will be made Exhibit 130?

19 COURTROOM ADMINISTRATOR: Yes.

20 THE COURT: And admitted. Was it part of the
21 original package that was delivered by the phone company?

22 MS. GORMAN: No, Your Honor. These were during
23 examination if we needed them. They were not at least very
24 helpful to me.

25 THE COURT: All right. They appear to be

1 helpful to the Court and relevant. I'll -- I think they're
2 appropriately admitted.

3 (Defendant's Exhibit 130 received into
4 evidence.)

5 COURTROOM ADMINISTRATOR: Please raise your
6 right hand.

7 You do solemnly swear that the testimony you
8 shall give in the cause now before the Court shall be the
9 truth, the whole truth, and nothing but the truth so help
10 you God?

11 THE WITNESS: I do.

12 COURTROOM ADMINISTRATOR: Please be seated.

13 Can you please state your name and spell your
14 name for the record.

15 THE WITNESS: Tony Moore. T-o-n-y M-o-o-r-e.

16 COURTROOM ADMINISTRATOR: Please tell us your
17 city and state of residence.

18 THE WITNESS: Yerington, Nevada.

19 THE COURT: Go ahead, please.

20 MS. RACHOW: And, Your Honor, as one
21 housecleaning, can Detective Kurup be excused? He has a
22 flight to catch tonight.

23 THE COURT: Is there any reason why he shouldn't
24 be excused?

25 MS. GORMAN: No, Your Honor.

1 THE COURT: All right. He may be.

2 MS. RACHOW: Thank you, Your Honor.

3 TONY MOORE

4 called as a witness on behalf of the
5 Government, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. RACHOW:

8 Q. Sir, how are you employed?

9 A. With the Reno Police Department.

10 Q. For how long have you been with RPD?

11 A. Just under 20 years.

12 Q. And what is your current assignment?

13 A. Drug interdiction.

14 Q. What does that mean?

15 A. My assignment involves intercepting large amounts of
16 drugs or drug contraband travelling through the area or
17 into the area.

18 Q. And do you work at a specific area?

19 A. I do. Reno. The Reno, Washoe County area.

20 Q. And do you work with a particular form of
21 transportation?

22 A. Yes. Amtrak and the Greyhound Bus line.

23 Q. And you've been with your current assignment for
24 four years?

25 A. Just under four years.

1 Q. Has that entire four years been with the Amtrak and
2 the bus lines?

3 A. Yes.

4 Q. Do you have any specialized training regarding
5 interdiction?

6 A. Yes, I do.

7 Q. And can you tell us about that?

8 A. Yes. When I originally came into this assignment,
9 my partner gave me a lot of on-the-job training. He is
10 currently an instructor with the International Narcotics
11 Interdiction Association.

12 Q. And is that the premier organization that deals with
13 training interdiction officers?

14 A. Yes.

15 Q. Have you gone to any specialized trainings?

16 A. Yes, I have. For the past three years I've gone to
17 the INIA, or International Narcotics Interdiction
18 Association, Conference, which includes about 28 hours of
19 interdiction training.

20 Q. And what types of things are you taught?

21 A. Train interdiction, parcel interdiction, bus
22 interdiction, small airplanes. Just a large variety of
23 subjects related to interdiction.

24 Q. And is there anything specific to train interdiction
25 that they instruct you to look for?

1 A. Yes.

2 Q. And can you tell us about that?

3 A. Basically we are looking for travelling
4 characteristics that have been found to be consistent with
5 persons transporting drug contraband.

6 Q. And what are some of those indicators?

7 A. It would be one-way travel across a very large
8 distance, the reservations being made just prior to
9 travelling, fictitious information, cash payments.

10 Q. Do you look to see who purchases tickets?

11 A. Yes.

12 Q. And would that have any bearing on your review of
13 somebody's reservation?

14 A. You know, it's -- if we're looking at a reservation,
15 it's just a name to us.

16 Q. Do you check to see if it's the same person who has
17 the reservation as who bought the reservation?

18 A. When we -- oh, on the reservation?

19 Q. Yes.

20 A. Absolutely, yes.

21 Q. And why is that?

22 A. Well, what we know to be common is a lot of
23 passengers travelling on the train are also the ones who
24 pay for their ticket. It is a very common thing to see.

25 When we see that a passenger on a train, their

1 reservation was made or the ticket was paid for by someone
2 else, it's of interest to us.

3 Q. And why is a one-way ticket something that flags
4 your attention?

5 A. It's just what we've learned to be a common
6 travelling characteristic.

7 Q. Now, obviously not everyone's reservation that has
8 these indicators turns out to have contraband; is that
9 true?

10 A. That's correct.

11 Q. But based on your four years -- your almost four
12 years of working interdiction, have a lot of these
13 indicators proven to be reliable?

14 A. Yes.

15 Q. How does an interdiction team work at Amtrak?

16 A. Our day will start out, someone from our team will
17 check names off the manifest, look at reservation
18 information and look for some of these characteristics.

19 When the train arrives, we'll attempt to locate
20 these individuals and consensually speak to them.

21 Q. Now --

22 MS. GORMAN: Your Honor, I'll make the same
23 objection. Consent is a -- that's your decision, Your
24 Honor, whether something is consensual. And I would ask
25 the witness to not characterize interactions like that.

1 THE COURT: All right. Let's just move forward.
2 I don't think I need a ruling on that.

3 BY MS. RACHOW:

4 Q. And, sir, are the manifests for the trains run every
5 single day?

6 A. Yes.

7 Q. And were they run on December 4th of 2014?

8 A. Yes, they were.

9 Q. Were you working that day?

10 A. Yes.

11 Q. How many trains come through Amtrak on a regular
12 day? That Reno station. I'm sorry.

13 A. Two times. A morning train, which is normally
14 travelling westbound, and an afternoon train, which is
15 travelling eastbound.

16 Q. Were you working the morning of December 4th of
17 2014?

18 A. Yes.

19 Q. And prior to meeting the train, had the passenger
20 manifest been run?

21 A. Yes.

22 Q. And did somebody's reservation catch your attention?

23 A. Yes.

24 Q. And do you recall whose reservation that was?

25 A. It -- there was one reservation that I recall, which

1 was for a passenger with the name Shaun Estes.

2 Q. And do you recall why that reservation attracted
3 attention?

4 A. It had some of the travelling characteristics that I
5 had mentioned. I believe \$970 was paid for travel one way
6 into Emeryville.

7 Q. And why would that be significant?

8 A. Well, it -- it -- it's what we learn to look for.
9 It's what we've been taught. It's a consistent
10 characteristic from past -- individuals who we have
11 received or located drug contraband on.

12 Q. And to be fair, this doesn't give you enough to make
13 any sort of arrest --

14 A. No.

15 Q. -- is that true?

16 A. That's true.

17 Q. So what is your next step?

18 A. We will ask to talk to this person.

19 Q. Now, with Mr. Estes' reservation attracting
20 attention, was the decision made to try to meet with
21 Mr. Estes?

22 A. Yes.

23 Q. Did you have any idea who Mr. Estes was prior to
24 meeting with him?

25 A. No.

1 Q. Did you know what he looked like?

2 A. No.

3 Q. Did you know where he was located on the train?

4 A. Yes. The first location we would look for him -- or
5 we looked for him was room 10 of train car 531.

6 Q. And was that because that was on his reservation?

7 A. Yes.

8 Q. Is that the first step you usually take when trying
9 to make contact with one of these individuals whose
10 reservations you've flagged?

11 A. Yes, it is.

12 Q. And why is that?

13 A. Well, that's the one location we know to be linked
14 to that reservation. And it's a good possibility the
15 person might be at that location.

16 Q. Now, with the morning train from Amtrak stopping in
17 Reno, is the amount of time that the train stops always the
18 same?

19 A. No.

20 Q. And what does that depend on?

21 A. It depends -- well, the train is scheduled to leave
22 at 8:36 every day. So if it shows up at 8:10, it will
23 leave at 8:36, unless there's something holding it up,
24 which would be passengers getting on or off.

25 If it shows up after 8:36, it will only be there

1 long enough to conduct train business, which would be
2 getting the crew on and off and the passengers on and off.
3 So they try to minimize the time that it's stopped.

4 Q. And on December 4th was the train late?

5 A. Yes, it was.

6 Q. Was it several hours late?

7 A. Yes.

8 Q. Do you recall trying to make contact with Mr. Estes
9 at his room?

10 A. Yes.

11 Q. And was Mr. Estes there?

12 A. No, he was not.

13 Q. So what happened next?

14 A. I had checked the room. There was no one in there,
15 so I walked back down the hallway to the exit door that
16 leads out on to the concrete platform. And I observed
17 Detective Kurup speaking to the gentleman with the orange
18 shirt on.

19 MS. RACHOW: And for the record, may it be
20 reflected that the witness just identified the defendant?

21 THE COURT: Yes.

22 BY MS. RACHOW:

23 Q. Now, sir, you stated that you checked the room. Was
24 the door open?

25 A. I don't recall.

1 Q. And could you have seen in the room if the door was
2 open?

3 A. Yes. But I -- I don't recall being able -- or
4 seeing what was in the room. I just know no persons were
5 in there.

6 Q. Would you have opened the door if the room would
7 have been closed?

8 A. Never.

9 Q. Never?

10 A. No. Definitely not.

11 Q. Now, you mentioned Detective Kurup. With the
12 interdiction team, do you work in pairs?

13 A. Yes, we do.

14 Q. And why do you work in pairs?

15 A. It's a common policing principle, cover and contact.
16 Or if he needs assistance in any way and he's the one
17 making contact, I will assist him. Or vice versa.

18 Q. Now, what -- do you wear a uniform?

19 A. No.

20 Q. And what type of clothing do you wear?

21 A. We wear plainclothes. Looks very much like a
22 civilian would who is riding the train.

23 Q. And is that the reason you wear plainclothes?

24 A. Yes, we do. It's to blend in and also not attract a
25 lot of attention.

1 Q. And why don't you want to attract a lot of
2 attention?

3 A. Well, it's to -- Amtrak's very customer-service
4 oriented. And I -- some people, it's our experience, do
5 get a little bit nervous when the police are around,
6 whether we're talking to them or not.

7 Q. Now, even though you're in plainclothes, do you
8 still have a badge?

9 A. Yes.

10 Q. And is that badge displayed?

11 A. Not normally. It's normally under our shirts or our
12 jackets.

13 Q. And when would you choose to display the badge?

14 A. When I identify myself to someone.

15 Q. And why do you do that?

16 A. So they know that they're speaking to a police
17 officer.

18 Q. And are you armed?

19 A. Yes.

20 Q. And is your weapon visible?

21 A. Never.

22 Q. And you said never?

23 A. Well, when we're contacting someone, never.

24 But if there would be a reason to display it, we
25 would. But not normally would anyone know that we're even

1 armed.

2 Q. Now, you mentioned that you saw Detective Kurup
3 speaking with the defendant?

4 A. Yes.

5 Q. What were you doing?

6 A. I was standing back just so it wouldn't appear that
7 too many people around him are talking to him.

8 Q. Talking to who?

9 A. Mr. Estes.

10 Q. Why was that important to you?

11 A. Well, we want to -- we want to keep this
12 conversation as low key as possible.

13 Q. And did you make sure that you were far enough from
14 Mr. Estes that you weren't crowding his space?

15 A. Yes.

16 Q. Was there a canine officer at the train station?

17 A. Yes, there was.

18 Q. And do you recall where the canine officer was?

19 A. I do not recall exactly where he was.

20 Q. But you know that he was there?

21 A. Yes.

22 Q. And is the canine officer in uniform?

23 A. Yes.

24 Q. And do you and Detective Kurup -- since you're
25 working interdiction, do you hang out with the canine

1 officer?

2 A. Specifically when the trains --

3 Q. When the trains have arrived?

4 A. No, we actually separate ourselves.

5 Q. And why do you do that?

6 A. Just to remain less visible from the uniform
7 presence.

8 Q. So hypothetically if someone were to have said that
9 in this case that you, Detective Kurup, and the canine
10 officer were speaking together and pointing at Mr. Estes --

11 MS. GORMAN: Your Honor, objection, leading.

12 MS. RACHOW: It's a hypothetical.

13 THE COURT: Sustained.

14 BY MS. RACHOW:

15 Q. Did you speak to the canine officer while Detective
16 Kurup was engaging with Mr. Estes?

17 A. While I was standing in the door and Detective
18 Kurup --

19 Q. You were still on the platform?

20 A. No.

21 Q. Did you ever point at the defendant?

22 A. No.

23 Q. Could you overhear what Detective Kurup was saying
24 to Mr. Estes?

25 A. No.

1 Q. So you were far enough away that you couldn't hear
2 their conversation?

3 A. That's correct.

4 Q. Did you observe Mr. Estes yourself?

5 A. Yes, I did.

6 Q. And did you see him on the phone?

7 A. I did not see him on the phone.

8 Q. At some point did you board the train?

9 A. Yes, initially, when we were looking, when we were
10 checking room 10 to see if anyone was in there.

11 Q. How about after Detective Kurup was speaking with
12 Mr. Estes?

13 A. Yes.

14 Q. And can you tell us how that came to be?

15 A. Detective Kurup advised that we were going to deploy
16 a canine down the common hallway near to room 10.

17 Q. Is that common?

18 A. The hallway or --

19 Q. To deploy the canine?

20 A. Yes, it is. It would be the next logical step if we
21 weren't given consent to check a room.

22 Q. And do you do that on a daily basis?

23 A. Yes.

24 Q. Why would you run the dog after somebody denied
25 consent?

1 A. That's what my training has taught me, and it's --
2 it really is the next logical step. You know, it's a
3 common hallway, and we're interested to know about any
4 possible criminal activities, you know, associated with
5 these indicators.

6 Q. Is it ever used as a threat, in your experience,
7 that you're going to deploy the canine?

8 A. Never. It's usually a state -- it's always a
9 statement of fact.

10 Q. Now, in this specific case did you have any contact
11 with Mr. Estes?

12 A. I did.

13 Q. And can you tell us about that.

14 A. After the canine was deployed in the common hallway,
15 I advised Mr. Estes that the canine showed a lot of
16 interest at his room.

17 Q. Now, how -- so you're all upstairs. The canine's
18 being deployed. Do you recall where Mr. Estes was?

19 A. He was standing at the top of the stairwell toward
20 the window.

21 Q. And was somebody standing in the way or in between
22 him and the stairwell?

23 A. Not that I recall.

24 Q. Did you ask him to remain up there with you?

25 A. I -- I -- no, I did not.

1 Q. Did you tell him he had to stay up there with you?

2 A. No.

3 Q. And where were you in relation to where he,
4 Mr. Estes, was standing?

5 A. I was standing at the -- it would be the west end of
6 the hallway next to the stairwell, just so passengers
7 wouldn't walk in and startle the canine.

8 And Mr. Estes was probably, and this is an
9 estimation, about five feet away from me to my rear toward
10 the window.

11 Q. And did you do that on purpose? As far as where you
12 were placed and where Mr. Estes was?

13 A. You know, it -- I was under the impression he was
14 standing where he wanted to be.

15 Q. And you were trying --

16 MS. GORMAN: Your Honor, I'm just going to
17 object to that char- -- speculation.

18 THE COURT: I'll allow him to testify to his
19 impression. Overruled.

20 BY MS. RACHOW:

21 Q. Did you see if Mr. Estes was on the phone?

22 A. I don't ever recall him being on the phone.

23 Q. Did you ever hear his phone ring?

24 A. I don't recall.

25 Q. Did you take his phone at any point?

1 A. No.

2 Q. Did you go through his phone?

3 A. No.

4 Q. Now, you stated to Mr. Estes that the dog had shown
5 a lot of interest in his room?

6 A. Correct.

7 Q. Did you say anything else?

8 A. No. I just basically relayed what I had observed to
9 Mr. Estes.

10 Q. Did you tell him you were going to get a warrant?

11 A. No.

12 Q. Did you tell him you were going to seize his
13 belongings?

14 A. No.

15 Q. What did Mr. Estes say, if anything, in response to
16 your statement that the dog showed a lot of interest in his
17 room?

18 A. You know, I don't recall what he said. I did hear
19 him talking to Detective Kurup.

20 Q. And where was Detective Kurup at this point?

21 A. He was also at the top of the stairwell with
22 Mr. Estes.

23 Q. Now, is this a fairly small area?

24 A. Yes. But it's large enough for passengers to move
25 past each other.

1 Q. And did you hear Mr. Estes say that he wanted to
2 leave?

3 A. No.

4 Q. How was Mr. Estes' demeanor?

5 A. Very calm and polite.

6 Q. Did you have any impression that he might be scared
7 of you?

8 A. No.

9 Q. Intimidated?

10 A. No.

11 Q. Now, after -- you say that you didn't hear what
12 Mr. Estes had stated to Detective Kurup. Did you hear the
13 next thing that Detective Kurup did?

14 A. Well, at the time, Officer Hill and his dog, his
15 police canine Remy, they were deboarding the train. So
16 after they went down the stairwell, Detective Kurup and
17 Mr. Estes walked toward the room.

18 Q. Did you see who was leading?

19 A. It was Detective Kurup.

20 Q. Could you see what was happening at the room?

21 A. I stood close enough to see what was occurring. And
22 both Detective Kurup and Mr. Estes were in the room.

23 Q. And could you see what was going on in the room?

24 A. It appeared to me that they were searching.

25 Q. Did you see Mr. Estes do anything as opposed to

1 Detective Kurup?

2 A. Yes, I -- well, I saw him reach in the room. I
3 couldn't exactly see what was going on in there. And then
4 a short time later Detective Kurup advised me that there
5 was a handgun in the room.

6 Q. Okay. Now, you've mentioned that Officer Hill has
7 already left the train before Detective Kurup and Mr. Estes
8 walked back to the room; is that correct?

9 A. That's correct.

10 Q. Was there any other uniformed police presence on the
11 train --

12 A. No --

13 Q. -- car?

14 A. No, there was none.

15 Q. Were you aware of any other undercover police
16 officers on the train?

17 A. None.

18 Q. Now, after Detective Kurup advised you that there
19 was a firearm in Mr. Estes' luggage, what did you do?

20 A. I -- I don't know the circ- -- at the time I didn't
21 know the circumstances of the handgun. But I do know it's
22 against the policy of the train to have it on there.

23 I wanted to keep him calm, which he was. And I
24 asked if he would speak to me downstairs. And I explained
25 the handgun was in violation of an Amtrak policy.

1 Q. Did you specifically say anything about there being
2 a violation of state law?

3 A. As far as the handgun, yes. Because I wanted to put
4 his mind at ease. I didn't want him to think that just
5 because he had a handgun there was anything to worry about.

6 Q. So at this point the only thing -- or the only issue
7 you're seeing is that Mr. Estes has a handgun in violation
8 of Amtrak policy?

9 A. Correct.

10 Q. And did you know that he would be removed from the
11 train from having a handgun in his luggage?

12 A. You know, it's -- it's up to the train --

13 Q. So that would be --

14 A. -- employees.

15 Q. I'm sorry. That's an Amtrak decision?

16 A. Yes, it is.

17 Q. Not a Reno Police Department --

18 MS. GORMAN: Your Honor --

19 BY MS. RACHOW:

20 Q. -- decision?

21 MS. GORMAN: -- objection. She's continuously
22 leading this witness on direct.

23 THE COURT: Sustained.

24 BY MS. RACHOW:

25 Q. Sir, is it fair to say that policy decisions

1 regarding Amtrak are not -- well, sorry.

2 Who are the policy decisions regarding Amtrak
3 made by?

4 A. Amtrak employees.

5 Q. And you stated that you asked Mr. Estes if he would
6 go down?

7 A. Yes.

8 Q. Can you tell us about that?

9 A. Yes. I asked if he would speak to me downstairs
10 where we had more privacy. And he agreed.

11 Q. Did he -- what was his demeanor with you?

12 A. Very calm.

13 Q. What happened next?

14 A. We walked downstairs. I asked for his ID because I
15 would like to know if he's a prohibited person or not. And
16 he did provide me with it.

17 A very short time later Detective Kurup came
18 downstairs with the bag.

19 Q. And what did you do with Mr. Estes' ID?

20 A. I called the Reno Police records division to check
21 if he had any warrants or a criminal history that would
22 prohibit him from possessing that handgun.

23 Q. Were you able to get off of the train?

24 A. No. It had started moving about the same time that
25 the handgun was located or that I was notified and that we

1 were walking down the stairs.

2 Q. And you stated there for a bit you were downstairs
3 with Mr. Estes, just the two of you?

4 A. A very short amount of time, yes.

5 Q. Did you have Mr. Estes -- what did you do with
6 Mr. Estes? Did you --

7 A. He was -- he stood down in this common area with me.
8 There's a hallway that leads to some bathrooms and then the
9 boarding area. There's -- it's an open area with two
10 doors, one door on each side for passengers to enter and
11 exit.

12 Q. Did you tell him he was under arrest?

13 A. No.

14 Q. At some point did you place him under arrest?

15 A. Yes.

16 Q. And can you tell us why?

17 A. I learned that he was a prohibited person from Reno
18 Police records personnel.

19 Q. Was this while you were still on the train?

20 A. Yes.

21 Q. And did you know if the train was going to be
22 stopped?

23 A. At that point, yes.

24 Q. Did you know where the train was going to be
25 stopped?

1 A. Detective Kurup made arrangements with the conductor
2 to stop in Verdi, Nevada.

3 Q. Is that a normal stop?

4 A. No.

5 Q. Now, you've placed Mr. Estes under arrest. Do you
6 read him his Miranda rights?

7 A. After we exited the train, yes.

8 Q. He's under arrest while you're on the train with
9 him; correct?

10 A. Yes, he is.

11 Q. Did you write -- read him his Miranda rights at that
12 time?

13 A. No.

14 Q. Why not?

15 A. There was a lot going on. We were arranging to get
16 the train stopped and get him off safely. And it just --
17 it didn't seem like the right forum for me to start
18 questioning him with all that going on. Because we would
19 inevitably have an interruption when the train stopped.

20 Q. Did he -- I'm sorry. Did you ask him any questions?

21 A. Prior to --

22 Q. While you're still on the train?

23 A. You know, I asked him for his driver's license. He
24 made some statements when he heard -- I'm assuming -- okay.

25 While I was talking to RPD records he did make

1 some statements. But I didn't ask him, you know, any
2 questions.

3 Q. And what type of statements did he make?

4 A. He made the statement that he had lawfully purchased
5 that handgun.

6 Q. When you were talking to RPD records, what type of
7 information are you conveying?

8 A. I will give them his identifying information, which
9 would be name, date of birth. I'm not sure if I had his
10 social security number. And I would have given them the
11 state ID number or license number that was on his ID.

12 Q. And you're doing this out loud?

13 A. Yes, on the phone.

14 Q. Could people overhear you?

15 A. Downstairs, I -- yeah. I think if someone was
16 really trying to listen to what I was saying, they would be
17 able to hear me.

18 Q. Now, after the train comes to a stop what happens?

19 A. We deboarded. And as we're awaiting for a transport
20 officer to arrive, I did advise him of his Miranda rights.
21 Because I -- you know, he seemed willing to talk.

22 Q. When you say he seemed willing to talk, did you ask
23 him if he wanted to talk?

24 A. After advising him of his Miranda rights, yes.

25 Q. And did he answer you?

1 A. He stated yes.

2 Q. Did you ask him further questions?

3 A. I did. I asked him specifically about the lawful
4 purchase. And he had described purchasing the handgun at a
5 pawn shop in Arkansas.

6 Q. When did you finish your interview with him?

7 A. After he mentioned that, he seemed very reluctant to
8 speak to me. And I -- you know, I stopped speaking to him.

9 Q. Was that a change from earlier in your encounter
10 with him?

11 A. At the -- yes, I think so.

12 Q. When he was making statements to you while you were
13 still on the train and you hadn't given him his Miranda,
14 did you ask him any follow-up questions?

15 A. I actually said, you know, "I'm interested to hear
16 what you have to say, but I'll ask you those questions when
17 the time's right." Those aren't my exact words, but that's
18 definitely what I indicated to him.

19 Q. And did you do a report in this case?

20 A. I did do a PC declaration.

21 Q. If you could turn to the defense exhibit binder in
22 front of you.

23 A. What number?

24 Q. It's going to be tab 101.

25 A. Okay.

1 Q. Are you familiar with the documents in that tab?

2 A. Yes, I am.

3 Q. And how are you familiar with those documents?

4 A. The top form is a booking sheet. It's what we call
5 it. And it has Mr. Estes' personal information as well as
6 his charges. In the second page is the declaration
7 statement.

8 Q. And did you complete the declaration statement?

9 A. I did.

10 Q. I'm going to direct your attention to the booking
11 sheet. Does it give an offense date and time?

12 A. Yes, it does.

13 Q. And --

14 A. And to me it looks like 12:00.

15 Q. Do you use a 24-hour clock?

16 A. Yes, we do.

17 Q. So would that be 12:00 p.m.?

18 A. Yes, 12:00 p.m.

19 Q. Now, if you would look at your report, your probable
20 cause statement on page 2. Is there a discrepancy in the
21 time?

22 A. For the offense it being 12:00 and for my
23 declaration statement that says 1140 hours, that's -- those
24 two times are definitely different. And I would say both
25 times are estimates.

1 Q. Have you had an opportunity to review the dispatch
2 log prior to your testimony today?

3 A. I have seen it, yes.

4 Q. And with your 20 years with Reno Police Department,
5 are you familiar with the dispatch logs?

6 A. Somewhat, yes.

7 Q. In this case did you ever call dispatch?

8 A. I did not.

9 Q. That would generate a dispatch log; is that correct?

10 A. In most cases it would.

11 Q. And did you specifically review the dispatch log in
12 this case to see whether or not you had called?

13 A. I -- you know, I did observe it, and I did not see
14 any -- anything on there that indicated that I called
15 dispatch.

16 Q. When you called into records to run Mr. Estes'
17 identification and whether there were any wants and
18 warrants, how did you do that?

19 A. With a cellular phone.

20 Q. So that would not be reflected on the dispatch?

21 A. No, it would not. Those are two different offices
22 and buildings.

23 Q. Are you familiar with the Reno Police Department
24 Tiburon reports?

25 A. I am.

1 Q. And are those generally the report formats you use?

2 A. Yes, they are.

3 Q. And do your partners on the Amtrak or in this
4 interdiction team use the Reno Police Department Tiburon
5 system?

6 A. Yes, he does.

7 Q. Are certain parts of Tiburon reports already
8 populated for you?

9 A. Yes, they are.

10 Q. And can you explain that for us?

11 A. Tiburon will -- it's connect -- our reporting system
12 is connected to the dispatch system also. So there's a
13 button on there. It basically auto fills some fields. And
14 it will populate some of the information, when you click on
15 that button, based on the actual dispatch call log.

16 Q. So it -- if some one officer on scene calls dispatch
17 and starts a log, your Tiburon report is going to
18 incorporate from that dispatch call?

19 A. Yes, that's very common.

20 Q. Whether or not you were the individual who called
21 dispatch?

22 A. Correct. It's the case number that links the two.

23 Q. Thank you.

24 MS. RACHOW: I don't have any further questions.

25 THE COURT: Cross-examination?

1 MS. GORMAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. GORMAN:

4 Q. Good afternoon. So, Detective Moore, you
5 testified -- so you're part of the High Intensity Drug
6 Trafficking Area Task Force?

7 A. That's correct.

8 Q. Okay. And you testified to some of your training
9 about drug trafficking, essentially?

10 A. Generally, yes.

11 Q. Okay. And can you tell me a little bit more about
12 that training? So where was -- tell me about the last time
13 you had training on drug trafficking.

14 A. It was in Newport Beach --

15 Q. Okay.

16 A. -- California.

17 Q. In Newport Beach --

18 A. I don't know the exact date.

19 Q. Okay. Can you tell me, who was your instructor in
20 that?

21 A. There were many, many instructors. And I -- off the
22 top of my head, I -- there's no way for me to accurately
23 give you that information.

24 I can tell you that one was Joe Lever. He
25 teaches train interdiction.

1 Q. He teaches -- so is the bulk of where you get your
2 information on train interdiction, what training is that
3 from?

4 A. Well, INIA. It's also from experience.

5 Q. Okay. And so INIA. And that's the organization
6 that you testified about on direct examination?

7 A. Yes.

8 Q. Okay. And did they provide you, for example, an
9 interdiction manual?

10 A. Some classes they provide material. But I wouldn't
11 call it a manual.

12 Q. Okay. Do you have material that you rely on in
13 terms of investigating drug interdiction?

14 A. I'm sure I do. I can't speak specifically of it.

15 Q. Okay. Part of your job then is to -- on this task
16 force, to investigate and arrest people travelling on
17 Amtrak with drugs?

18 A. It's not -- not the way you word it. It's to locate
19 folks transporting illegal drugs and drug contraband.

20 Q. I'm sorry. I didn't understand. It's okay folks?

21 A. To locate.

22 Q. Oh, to locate folks.

23 So part of your job is, though, to find people
24 who are transporting drugs on --

25 A. Yes.

1 Q. -- Amtrak?

2 A. Yeah --

3 Q. Okay.

4 A. -- that's part of it, yes.

5 Q. And when people are transporting drugs, you arrest
6 them usually?

7 A. Very often, yes.

8 Q. Okay. So you look at ticket information to decide
9 who to target for investigation?

10 A. That's part of it, yes.

11 Q. Okay. Well, that would be the manifest that you
12 discussed with the prosecutor on direct examination?

13 A. Correct.

14 Q. Okay. So for your indicators, one of the indicators
15 you look for are cash purchases of tickets?

16 A. Yes.

17 Q. Okay. And that's because cash is not traceable?

18 A. It --

19 Q. Is that right?

20 A. It could be.

21 Q. It could be traceable?

22 A. Yes -- no, I mean, that could be a reason, yes.

23 Q. So is the reason you look for cash as an indicator
24 because cash is not traceable?

25 A. Yes. And it's also a common travelling -- a

1 characteristic that we encounter often with these folks
2 that are transporting contraband.

3 Q. So drug traffickers often purchase tickets in cash?

4 A. Yes, they do.

5 Q. Okay. And another indicator is purchase of tickets
6 prior -- immediately prior to boarding?

7 A. Yes. That's one of the travelling characteristics.

8 Q. Okay. And maybe fictitious information on a ticket?

9 A. Correct.

10 Q. Okay. And those are the biggest indicators, would
11 you say?

12 A. They're very common. I wouldn't necessarily say
13 they're the biggest because we do talk to people who we
14 don't find anything on them. And they do have those
15 travelling characteristics. So --

16 Q. So you wouldn't say that fictitious information,
17 cash ticket, and immediate prior to boarding purchase are
18 the biggest indicators?

19 A. I wouldn't say anything is the biggest. Those are
20 very common, and that is what we look for.

21 Q. Okay. So, Detective Moore, I'm just going to direct
22 you to Exhibit 110. And specifically to page 31.

23 A. Okay.

24 Q. Okay. So actually starting on page 30 in the middle
25 of the page -- well, first of all, turning to the front of

1 that exhibit, can you tell me what that is?

2 A. Front of the exhibit.

3 Q. And you might still be looking for it. So it's
4 Exhibit 110.

5 A. Okay. This is -- appears to be a record of
6 deposition, my statement --

7 Q. So it's --

8 A. -- from a deposition.

9 Q. -- a deposition of you?

10 A. Yes.

11 Q. Okay. Can you tell me when it was taken?

12 A. It looks like 8/5 of 2014.

13 Q. So about four months before this incident?

14 A. Correct.

15 Q. Okay. So isn't it true that you identify -- and
16 I'll give you a chance to read through the second half of
17 page 30. But those are the indicators you have identified
18 as the biggest indicator as what you're looking for; is
19 that right?

20 A. Let's see. Which line are you discussing?

21 Q. Okay. And I'll give you a moment to read from the
22 middle of page 30.

23 And you can just look up when you're done.

24 A. Okay. So I understand where the word biggest is
25 coming from.

1 Q. So I'm just going to -- I'm going to -- I'm sorry.
2 But the way this goes, generally I'll ask questions, and
3 just answer my questions.

4 A. Okay.

5 Q. So did you identify cash purchases of ticket and
6 fictitious information on tickets as the biggest indicators
7 that you look for?

8 A. I'm quoted saying that here, yes.

9 Q. So you're quoted saying that. Is that your
10 deposition transcript?

11 A. That's accurate.

12 Q. Okay. That's accurate.

13 So moving from there, another indicator,
14 Detective Moore, might be carrying little or no baggage?

15 A. Yes.

16 Q. Okay. Or starting a trip at an unmanned station?

17 A. Yes.

18 Q. Okay. And you also observe people on trains and
19 platforms?

20 A. Correct.

21 Q. Okay. And an indicator might be excessive
22 nervousness?

23 A. Yes.

24 Q. Okay. Or being evasive as they walk through the
25 train station?

1 A. Can you clarify being -- avoiding?

2 Q. Evasive of things like canines or officers when
3 they're walking through --

4 A. Yes.

5 Q. -- the train station?

6 A. Yes.

7 Q. Okay. So, Detective, are you aware of any research
8 that connects people ticket-purchasing behavior with the
9 likelihood of them being a drug mule?

10 A. No.

11 Q. Okay.

12 A. If you mean transporting, no.

13 Q. Yeah, transporting.

14 And, to your knowledge, does Amtrak collect data
15 on people who have one or more of these indicators whether
16 or not they're carrying drugs?

17 A. Not that I'm aware of.

18 Q. Okay. And, to your knowledge, does Reno Police
19 Department keep these statistics?

20 A. Not that I'm aware of.

21 Q. Okay. And you don't personally?

22 A. No.

23 Q. Okay. And you've identified people in the past with
24 these indicators who have -- and found no evidence of
25 criminal activity?

1 A. Yes, we've contacted people in the past based on
2 these indicators.

3 Q. And found no evidence?

4 A. That's correct.

5 Q. Okay. But you singled out Mr. Estes in this case
6 because of the indicators on his reservation; is that
7 right?

8 A. That's why we wanted to speak to him, yes.

9 Q. Yes. So that's why you singled out Mr. Estes to
10 talk to him are these indicators; is that right?

11 A. Yes.

12 Q. Okay. So I want to talk to you about those
13 indicators.

14 So the first indicator was that Mr. Estes booked
15 his ticket on November 29 for travel beginning on December
16 2nd?

17 Q. My understanding is that's when the reservation was
18 made, yes.

19 A. Okay.

20 Q. Okay. So that's a yes. Okay.

21 Now, I'm going to show you Exhibit 115 if you
22 could turn to that. Do you have it?

23 A. (No audible response.)

24 Q. Is that the information you had about Mr. Estes
25 before you targeted him?

1 A. Yes.

2 Q. Okay. And that shows an emergency exchange voucher;
3 correct?

4 A. It does show an exchange.

5 Q. Okay. And that was issued because of a late train?

6 A. I don't know that.

7 Q. So this was the information you had available to
8 you; is that right?

9 A. Yes, it is.

10 Q. So I'm going to direct you towards the top where I
11 believe it says "late train."

12 And, Your Honor, I could use the Elmo if that
13 might be easier.

14 A. You know, it's a -- I'm looking, and it's actually
15 kind of a tough copy to read. Okay. I do read -- I do see
16 that.

17 Q. Okay. So he was issued an emergency exchange
18 voucher because there was a late train; is that right?

19 A. That's what it says, yes.

20 Q. So this isn't even the original, like, ticketing
21 information for Mr. Estes, is it?

22 A. This is the -- this is the information we have
23 available --

24 Q. So that's --

25 A. -- to us.

1 Q. -- all the information that you had?

2 A. Well, there's other screens also, you know, that
3 would show when the reservation was made.

4 Q. Okay. Well, were there other screens that you
5 looked at, then, in this case?

6 A. Yes.

7 Q. So you looked at -- okay. So you looked at other
8 screens in addition to this?

9 A. It's basically the reservation history screen. And
10 when you say "you," I don't believe I'm the one who printed
11 or looked at this originally.

12 Q. So did you -- so do you know who looked at -- who
13 printed this out originally?

14 A. Detective Kurup.

15 Q. Okay. And so your testimony is that there are
16 other -- other information that he looked at beyond this?

17 A. For?

18 Q. In terms of Mr. Estes?

19 MS. RACHOW: Objection. Calls for speculation.

20 MS. GORMAN: Your Honor, Detective Moore just
21 testified to it.

22 THE COURT: That doesn't call for speculation.
23 You asked if that was his testimony.

24 BY MS. GORMAN:

25 Q. Is that -- that was your testimony, right, that

1 there's other information that Detective Kurup would have
2 looked at or looked at?

3 A. Yes. And I can give an explanation if you would
4 like.

5 Q. Well, at this point I'll -- we'll stick with this.

6 So there is other information that Detective
7 Kurup would have looked at. Do you know if that
8 information was ever provided to the government in this
9 case?

10 A. I don't know.

11 Q. You don't know. So but this is the information --
12 so this is some of the information, then, you're saying
13 that you had about Mr. Estes?

14 A. Yes.

15 Q. Okay. But you believe that there's more information
16 that you had?

17 A. May I give an explanation?

18 MS. GORMAN: So, Your Honor, I'm going to move
19 for production of that information.

20 Detective Kurup testified this was all that
21 there was. I think that this is really important
22 information in this case. It wasn't provided to us.

23 MS. RACHOW: And, Your Honor, this is the first
24 I've heard of there being other screens or other
25 information that Detective Kurup might have looked at.

1 Detective Kurup would actually be the one to
2 ask. This witness keeps wanting to offer an explanation.
3 Maybe this would be the point for him to offer the
4 explanation. Because the government has turned over --

5 THE COURT: Well, if he's personally aware of
6 what Detective Kurup did, he's qualified to testify to it.
7 If he's not, then he isn't. Because, first of all,
8 Detective Kurup has testified. And as I recall his
9 testimony, he stated that this was the only information
10 gathered from. I could be mistaken.

11 But I would urge you, Ms. Rachow, to check with
12 Detective Kurup to see if there was other information that
13 he referred to. And perhaps it's just a common
14 misunderstanding.

15 MS. RACHOW: Absolutely, Your Honor. And, in
16 fact, I will call him at 5:00, since he's going to be on
17 his way to the airport.

18 THE COURT: All right.

19 MS. GORMAN: So, Your Honor, but I want to be
20 clear, can we have a court order that that information be
21 produced to both parties.

22 THE COURT: Any information that he would have
23 referred to should be produced, definitely.

24 MS. GORMAN: Okay. And, Your Honor, and the
25 fact that the government doesn't know doesn't release them

1 of the obligation not to produce that. And -- okay.

2 THE COURT: Well, it all depends on the
3 circumstances. But, in any event, I will order that if
4 there's other information that he referred to, that that be
5 produced by the government.

6 MS. GORMAN: So, Your Honor, my only concern is
7 that we're in the middle of this hearing. And so I don't
8 know if we can have it produced now, but I think it's
9 important for this hearing.

10 THE COURT: Well, that's a reasonable request.
11 And we're within 15 minutes of shutdown time anyway; so I
12 will order that.

13 And, Ms. Rachow, if you can check on that. And
14 then we'll resume in the morning at 8:30. And hopefully if
15 there is such information, you'll have it by that time and
16 can be prepared.

17 Let's do that. The admonitions concerning the
18 Rule of Exclusion continue. And we'll start promptly in
19 the morning at 8:30.

20 The Court will be adjourned at this time.

21 COURTROOM ADMINISTRATOR: Please rise.

22 (The proceedings adjourned at 4:45 p.m.)

23 * * *

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.



4/4/16

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date

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